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From: General Secretariat of the Council  
To: Permanent Representatives Committee

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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND  
OF THE COUNCIL on the prevention of the use of the financial system for  
the purposes of money laundering or terrorist financing  
- Confirmation of the final compromise text with a view of agreement

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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**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 Bank<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive (EU) 2015/849 of the European Parliament and of the Council<sup>3</sup> constitutes the main legal instrument for the prevention of the use of the Union financial system for the purposes of money laundering and terrorist financing. That Directive sets out a comprehensive legal framework, which Directive (EU) 2018/843 of the European Parliament and the Council<sup>4</sup> further strengthened by addressing emerging risks and increasing transparency of beneficial ownership. Notwithstanding its achievements, experience has shown that further improvements should be introduced to adequately mitigate risks and to effectively detect criminal attempts to misuse the Union financial system for criminal purposes.

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C , , p. .

<sup>3</sup> 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).

<sup>4</sup> Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ L 156, 19.6.2018, p. 43).

- (2) The main challenge identified in respect to the application of the provisions of Directive (EU) 2015/849 laying down obligations for private sector actors, the so-called obliged entities, is the lack of direct applicability of those rules and a fragmentation of the approach along national lines. Whereas those rules have existed and evolved over three decades, they are still implemented in a manner not fully consistent with the requirements of an integrated internal market. Therefore, it is necessary that rules on matters currently covered in Directive (EU) 2015/849 which may be directly applicable by the obliged entities concerned are addressed in **■ this** Regulation in order to achieve the desired uniformity of application.
- (3) This new instrument is part of a comprehensive package aiming at strengthening the Union's AML/CFT framework. Together, this instrument, Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final], Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final] and Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final] will form the legal framework governing the AML/CFT requirements to be met by obliged entities and underpinning the Union's AML/CFT institutional framework, including the establishment of an Authority for anti-money laundering and countering the financing of terrorism ('AMLA').

- (4) Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted at Union level, without taking into account international coordination and cooperation, would have very limited effect. The measures adopted by the Union in that field should therefore be compatible with, and at least as stringent as actions undertaken at international level. Union action should continue to take particular account of the Financial Action Task Force (FATF) Recommendations and instruments of other international bodies active in the fight against money laundering and terrorist financing. With a view to reinforcing the efficacy of the fight against money laundering and terrorist financing, the relevant Union legal acts should, where appropriate, be aligned with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by the FATF in February 2012 (the ‘revised FATF Recommendations’) and the subsequent amendments to such standards.

(5) Since the adoption of Directive (EU) 2015/849, recent developments in the Union's criminal law framework have contributed to strengthening the prevention and fight against money laundering, its predicate offences and terrorist financing. Directive (EU) 2018/1673 of the European Parliament and of the Council<sup>5</sup> has led to a common understanding of the money laundering crime and its predicate offences. Directive (EU) 2017/1371 of the European Parliament and of the Council<sup>6</sup> defined financial crimes affecting the Union's financial interest, which should also be considered predicate offences to money laundering. Directive (EU) 2017/541 of the European Parliament and of the Council<sup>7</sup> has achieved a common understanding of the crime of terrorist financing. As those concepts are now clarified in Union criminal law, it is no longer needed for the Union's AML/CFT rules to define money laundering, its predicate offences or terrorist financing. Instead, the Union's AML/CFT framework should be fully coherent with the Union's criminal law framework.

***(5a) The harmonisation in the area of criminal law enables a strong and coherent approach at Union level to the prevention of and fight against money laundering and its predicate offences, including corruption. At the same time, such an approach ensures that Member States that have adopted a broader approach to the definition of criminal activities which constitute predicate offences for money laundering can continue doing so. For this reason, in line with Directive (EU) 2018/1673, any kind of punishable involvement in the commission of a predicate offence as criminalised in accordance with national law should also be considered as a criminal activity for the purposes of that Directive and of this Regulation.***

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<sup>5</sup> Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018, p. 22).

<sup>6</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

<sup>7</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

- (6) Technology keeps evolving, offering opportunities to the private sector to develop new products and systems to exchange funds or value. While this is a positive phenomenon, it may generate new money laundering and terrorist financing risks, as criminals continuously manage to find ways to exploit vulnerabilities in order to hide and move illicit funds around the world. Crypto-assets service providers and crowdfunding platforms are exposed to the misuse of new channels for the movement of illicit money and are well placed to detect such movements and mitigate risks. The scope of Union legislation should therefore be expanded to cover these entities, in line with the recent developments in FATF standards in relation to crypto-assets. *At the same time, advances in innovation, such as the development of the metaverse, provide new avenues for the perpetration of crimes and for the laundering of their proceeds. It is therefore important to exercise vigilance as regards the risks associated with the provision of innovative products or services, whether at Union or national level, or at the level of obliged entities.*
- (7) The institutions and persons covered by this Regulation play a crucial role as gatekeepers of the Union's financial system and should therefore take all necessary measures necessary to implement the requirements of this Regulation with a view to preventing criminals from laundering the proceeds of their illegal activities or from financing terrorist activities. Measures should also be put in the place to mitigate any risk of non-implementation or evasion of targeted financial sanctions.

- (7a) *The definition of an insurance intermediary under Directive (EU) 2016/97 covers a broad range of natural or legal persons that take up or pursue the activity of insurance distribution. Some insurance intermediaries may take up insurance distribution activities under the full responsibility of insurance undertakings or intermediaries and carry out activities subject to their policies and procedures. Where these intermediaries do not collect premia or amounts intended for the customer, the policy holder or the beneficiary of the insurance policy, they are not in a position to conduct meaningful due diligence or to detect and report suspicious transactions. In view of this limited role and of the fact that full application of AML/CFT requirements is ensured by the insurance undertakings or intermediaries under whose responsibility they provide services, intermediaries that do not handle funds as defined in Article 4, point (25) of Directive (EU) 2015/2366 should not be considered obliged entities for the purposes of this Regulation.***
- (7b) *Holding companies that carry out mixed activities and the subsidiaries of which include at least one obliged entity should themselves be included as obliged entities in the scope of this Regulation. To ensure consistent supervision by financial supervisors, in the case that the subsidiaries of a mixed activity holding company include at least one credit institution or financial institution, the holding company itself should also qualify as financial institution.***



- (8) Financial transactions can also take place within the same group as way of managing group finances. However, such transactions are not undertaken vis-à-vis customers and do not require the application of AML/CFT measures. In order to ensure legal certainty, it is necessary to recognise that this Regulation does not apply to financial activities or other financial services which are provided by members of a group to other members of that group.
- (9) Independent legal professionals should be subject to this Regulation when participating in financial or corporate transactions, including when providing tax advice, where there is the risk of the services provided by those legal professionals being misused for the purpose of laundering the proceeds of criminal activity or for the purpose of terrorist financing. There should, however, be exemptions from any obligation to report information obtained before, during or after judicial proceedings, or in the course of ascertaining the legal position of a client, which should be covered by the legal privilege. Therefore, legal advice should remain subject to the obligation of professional secrecy, except where the legal professional is taking part in money laundering or terrorist financing, the legal advice is provided for the purposes of money laundering or terrorist financing, or where the legal professional knows that the client is seeking legal advice for the purposes of money laundering or terrorist financing. ***Knowledge and purpose can be inferred from objective, factual circumstances. As legal advice may already be sought at the stage of perpetrating the proceeds-generating criminal offence, it is important that cases excluded from the legal privilege extend to situations where the advice is provided in the context of the predicate offences. Legal advice sought in relation to ongoing judicial proceedings should not be deemed to constitute legal advice for the purposes of money laundering or terrorist financing.***

- (10) In order to ensure respect for the rights guaranteed by the Charter of Fundamental Rights of the European Union (the ‘Charter’), in the case of auditors, external accountants and tax advisors, who, in some Member States, are entitled to defend or represent a client in the context of judicial proceedings or to ascertain a client's legal position, the information they obtain in the performance of those tasks should not be subject to reporting obligations. ***However, the same exceptions that apply to lawyers and notaries should also apply to those professionals where acting in the exercise of the right of defence or ascertaining the legal position of a client.***
- (11) Directive (EU) 2018/843 was the first legal instrument to address the risks of money laundering and terrorist financing posed by crypto-assets in the Union. It extended the scope of the AML/CFT framework to two types of **crypto-asset service** providers: providers engaged in exchange services between virtual currencies and fiat currencies and custodian wallet providers. Due to rapid technological developments and the advancement in FATF standards, it is necessary to review this approach. A first step to complete and update the Union legal framework has been achieved with Regulation ***[please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final]***, which set requirements for crypto-asset service providers wishing to apply for an authorisation to provide their services in the single market. It also introduced a definition of crypto-assets and crypto-assets services providers encompassing a broader range of activities. Crypto-asset service providers covered by Regulation ***[please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final]*** should also be covered by this Regulation, to mitigate any risk of misuse of crypto-assets for money laundering or terrorist financing purposes.

- (11a) *The creation of markets in unique and non-fungible crypto-assets is still recent and has not resulted in legislation regulating their functioning. The evolution of these markets is being monitored and it is important that it does not result in new money laundering and terrorist financing risks that would not be properly mitigated. By 30 December 2024 the Commission will present a report to the European Parliament and the Council on the latest developments with respect to crypto-assets, including an assessment of the development of markets in unique and non-fungible crypto-assets, the appropriate regulatory treatment of such crypto-assets, including an assessment of and the necessity and feasibility of regulating providers of services related to unique and non-fungible crypto-assets. If appropriate, the Commission will accompany this report with a legislative proposal.*
- (12) Crowdfunding platforms' vulnerabilities to money laundering and terrorist financing risks are horizontal and affect the internal market as a whole. To date, diverging approaches have emerged across Member States as to the management of those risks. *While* Regulation (EU) 2020/1503 of the European Parliament and of the Council<sup>8</sup> harmonises the regulatory approach for business investment and lending-based crowdfunding platforms across the Union and **introduces several safeguards to deal with potential money laundering and terrorist financing risks**, *such as due diligence of crowdfunding platforms in respect of project owners and within authorisation procedures, the lack of a harmonised legal framework with robust AML/CFT obligations for crowdfunding platforms creates gaps and weakens the Union AML/CFT safeguards*. It is therefore **necessary to ensure that all** crowdfunding platforms, *including those already licensed under Regulation (EU) 2020/1503, are subject to Union AML/CFT legislation.*

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<sup>8</sup> Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347, 20.10.2020, p. 1).

- (13) Crowdfunding **■ intermediaries, which operate a digital platform in order to match or facilitate the matching of funders with projects owners such as associations or individuals that seek funding, are exposed to money laundering and terrorist financing risks.**

*Undertakings* that are not licensed under Regulation (EU) 2020/1503 are currently left either unregulated or to diverging regulatory approaches, including in relation to rules and procedures to tackle anti-money laundering and terrorist financing risks. **■ Those intermediaries should therefore be subject to the obligations of this Regulation, in particular to avoid the diversion of funds as defined in Article 4, point (25) of Directive (EU) 2015/2366 or crypto-assets raised for illicit purposes by criminals. In order to meet the challenges, these obligations apply to a wide range of projects, including, inter alia, educational or cultural projects and the collection of those funds or crypto-assets to support more general causes, for example in the humanitarian field, or to organize or celebrate a family or social event.**

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- (14) Directive (EU) 2015/849 set out to mitigate the money laundering and terrorist financing risks posed by large cash payments by including persons trading in goods among obliged entities when they make or receive payments in cash above EUR 10 000, whilst allowing Member States to introduce stricter measures. Such approach has shown to be ineffective in light of the poor understanding and application of AML/CFT requirements, lack of supervision and limited number of suspicious transactions reported to the FIU. In order to adequately mitigate risks deriving from the misuse of large cash sums, a Union-wide limit to large cash transactions above EUR 10 000 should be laid down. As a consequence, persons trading in goods **■ no longer need to be subject to AML/CFT obligations, with the exception of persons trading in precious metals, precious stones, other high value goods and cultural goods.**

- (15) Some categories of traders in goods are particularly exposed to money laundering and terrorist financing risks due to the high value that the *often* small, transportable goods they deal with contain. For this reason, persons dealing in precious metals and precious stones *and other high value goods* should be subject to AML/CFT requirements, *where such trading is either a regular or a principal professional activity.*
- (15a) *Motor vehicles, watercrafts and aircrafts in the higher market segments are vulnerable to risks of misuse for money laundering and terrorist financing given their high value and transportability. Therefore, traders of such goods should be subject to AML/CFT requirements. The transportable nature of those goods is particularly attractive for the purposes of money laundering and terrorist financing given the ease with which such goods may be moved across or outside Union borders, and the fact that access to information on such goods where registered in third countries may not be easily accessible to competent authorities. To mitigate risks that Union high-value products be misused for criminal purposes and ensure visibility on the ownership of such goods, it is necessary to require traders in high-value goods to report transactions concerning the sale of motor vehicles, watercrafts and aircrafts. Credit and financial institutions provide services that are essential for the conclusion of the sale or transfer of ownership of such goods, and should also be required to report those transactions to the FIU. While goods intended solely for the pursuit of commercial activities should not be subject to such disclosures, sales for private, non-commercial use should not be limited to instances where the customer is a natural person, but can also relate to sales to legal entities and arrangements, in particular when they are set up to administer the wealth of their beneficial owner.*

(16) Investment migration operators are private companies, bodies or persons acting or interacting directly with the competent authorities of the Member States on behalf of third-country nationals or providing intermediary services to third-country nationals seeking to obtain residence rights in a Member State in exchange of any kind of investments, including capital transfers, purchase or renting of property, investment in government bonds, investment in corporate entities, donation or endowment of an activity contributing to the public good and contributions to the state budget. Investor residence schemes present risks and vulnerabilities in relation to money laundering, corruption and tax evasion. Such risks are exacerbated by the cross-border rights associated with residence in a Member State. Therefore, it is necessary that investment migration operators are subject to AML/CFT obligations. This Regulation should not apply to investor citizenship schemes, which result in the acquisition of nationality in exchange for such investments, as such schemes must be considered as undermining the fundamental status of Union citizenship and sincere cooperation among Member States.

- (17) *While creditors for mortgage and consumer credit are typically credit institutions or financial institutions, there are consumer and mortgage credit intermediaries that do not qualify as credit institutions or financial institutions and have not been subject to AML/CFT requirements at Union level, but have been subject to such obligations in certain Member States due to their exposure to money laundering and terrorist financing risks. Depending on their business model, such consumer and mortgage credit intermediaries may be exposed to significant money laundering and terrorist financing risks. It is important to ensure that entities carrying out similar activities that are exposed to such risks are covered by AML/CFT requirements, regardless of whether they qualify as credit institutions or financial institutions. Therefore, it is appropriate to include consumer and mortgage credit intermediaries that are not credit institutions or financial institutions but that are, as a result of their activities, exposed to money laundering and terrorist financing risks. In many cases, however, the credit intermediary is acting on behalf of the credit or financial institution that grants and processes the loan. In those cases, AML/CFT requirements should not apply to consumer and mortgage credit intermediaries, but only to the credit or financial institutions.*

(18) To ensure a consistent approach, it is necessary to clarify which entities in the investment sector are subject to AML/CFT requirements. Although collective investment undertakings already fell within the scope of Directive (EU) 2015/849, it is necessary to align the relevant terminology with the current Union investment fund legislation, namely Directive 2009/65/EC of the European Parliament and of the Council<sup>9</sup> and Directive 2011/61/EU of the European Parliament and of the Council<sup>10</sup>. Because funds might be constituted without legal personality, the inclusion of their managers in the scope of this Regulation is also necessary. AML/CFT requirements should apply regardless of the form in which units or shares in a fund are made available for purchase in the Union, including where units or shares are directly or indirectly offered to investors established in the Union or placed with such investors at the initiative of the manager or on behalf of the manager. ***With view to the fact that both funds and fund managers are within the scope of AML requirements, it is appropriate to clarify that a duplication of efforts should be avoided. To that end, the AML measures taken at the level of the fund and at the level of its manager should not be the same, but should reflect the allocation of tasks between the fund and the manager.***

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<sup>9</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

<sup>10</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).



***(18a) The activities of professional football clubs and football agents are exposed to risks of money laundering and its predicate offences due to several factors inherent to the football sector, such as the global popularity of football, the considerable sums, cash flows and large financial interests involved, cross-border transactions, and sometimes opaque ownership structures. All these factors expose football to possible abuse by criminals to legitimise illicit funds and thus make the sport vulnerable to money laundering and its predicate offences. Key areas of risk include, for example, transactions with investors, sponsors, including advertisers and the transfer of players.. Professional football clubs and football agents should therefore put in place robust anti-money laundering measures, including carrying out customer due diligence on investors, sponsors, including advertisers, and other partners and counterparties with whom they transact. In order to avoid any disproportionate burden on smaller clubs that are less exposed to risks of criminal misuse, Member States may, on the basis of a proven lower risk of money laundering, its predicate crimes and terrorist financing, exempt certain professional football clubs from the requirements of this Regulation, whether in full or in part.***

***(18b) The activities of professional football clubs competing in the first divisions of their national football leagues make them more exposed to higher risks of money laundering and its predicate offences compared to football clubs participating in lower divisions. For example, top-tier football clubs engage in more substantial financial transactions, such as high-value transfers of players and sponsorship deals, they may have more complex corporate structures with multiple layers of ownership and are more likely to engage in cross-border transactions. These factors make such top-tier clubs more attractive for criminals and provides more opportunities to conceal illicit funds. Therefore, Member States may only exempt professional football clubs participating in the first division in cases of proven low risk and provided that they have a turnover for each of the previous two years of less than 5 million EUR. Nonetheless, the risk of money laundering is not determined solely by the division in which a football club competes. Lower-division clubs may also be exposed to significant risks of money laundering and its predicate offences. Member States should therefore only be able to exempt from the requirements of this Regulation football clubs in lower divisions that are associated with proven low risk of money laundering, its predicate offences or terrorist financing.***

***(18c) This Regulation harmonises the measures to be put in place to prevent money laundering, its predicate offences and terrorist financing at Union level. At the same time, in line with the risk-based approach, Member States should be able to impose additional requirements in limited cases where they are confronted with specific risks. To ensure that these risks are adequately mitigated, obliged entities that have their head office established in another Member State should apply those additional requirements, whether they operate in that other Member State through freedom of establishment or under the freedom to provide services, provided they have an infrastructure in that other Member State. Furthermore, in order to clarify the relationship between those internal market freedoms, it is important to clarify what activities amount to an establishment.***

- (18d) *Consistent with case law of the Court of Justice, unless specifically set out in sectorial legislation, an establishment does not need to take the form of a subsidiary, branch or agency, but may consist of an office managed by an obliged entity's own staff or by a person who is independent but authorised to act on a permanent basis for the obliged entity. According to this definition, which requires the actual pursuit of an economic activity at the place of establishment of the provider, a mere letter box does not constitute an establishment. Equally, offices or other infrastructure used for supporting activities, such as mere back-office operations, IT-hubs or data centres operated by obliged entities, do not constitute an establishment. Conversely, activities such as the provision of crypto-asset services through ATMs constitute an establishment having regard to the limited physical equipment needed for operators that mainly service their customers through the internet as is the case for crypto-asset service providers.*
- (19) It is important that AML/CFT requirements apply in a proportionate manner and that the imposition of any requirement is proportionate to the role that obliged entities can play in the prevention of money laundering and terrorist financing. To this end, it should be possible for Member States in line with the **risk-based** approach of this Regulation to exempt certain operators from AML/CFT requirements, where the activities they perform present low money laundering and terrorist financing risks and where the activities are limited in nature. To ensure transparent and consistent application of such exemptions across the Union, a mechanism should be put in place allowing the Commission to verify the necessity of the exemptions to be granted. The Commission should also publish such exemptions on a yearly basis in the *Official Journal of the European Union*.

- (20) A consistent set of rules on internal systems and controls that applies to all obliged entities operating in the internal market will strengthen AML/CFT compliance and make supervision more effective. In order to ensure adequate mitigation of money laundering and terrorist financing risks, *as well as of risks of non-implementation or evasion of targeted financial sanctions*, obliged entities should have in place an internal control framework consisting of risk-based policies, **■** *procedures and controls* and clear division of responsibilities throughout the organisation. In line with the risk-based approach of this Regulation, those policies, **■** *procedures and controls* should be proportionate to the nature *of the business, including its risks and complexity, and the* **■** size of the obliged entity and respond to the risks of money laundering and terrorist financing that the entity faces, *including, for crypto-asset service providers, transactions with self-hosted wallets*.
- (21) An appropriate risk-based approach requires obliged entities to identify the inherent risks of money laundering and terrorist financing *as well as risks of non-implementation or evasion of targeted financial sanctions* that they face by virtue of their business in order to mitigate them effectively and to ensure that their policies, procedures and internal controls are appropriate to address those inherent risks. In doing so, obliged entities should take into account the characteristics of their customers, the products, services or transactions offered, *including, for crypto-asset service providers, transactions with self-hosted addresses, as well as* the countries or geographical areas concerned and the distribution channels used. In light of the evolving nature of risks, such risk assessment should be regularly updated.

- (21a) *With a view to supporting a consistent and effective approach to the identification of risks affecting their businesses by obliged entities, AMLA should issue guidelines on minimum requirements for the content of the business-wide risk assessment and additional sources of information to be taken into account. Those sources may range from information from international standard setters in the field of AML/CFT, such as FATF mutual evaluation reports, and other credible and reliable sources providing information on typologies, emerging risks and criminal activity, including corruption, such as reports from civil society organisations, media and academia.*
- (22) It is appropriate to take account of the characteristics and needs of smaller obliged entities, and to ensure treatment which is appropriate to their specific needs, and the nature of the business. This may include exempting certain obliged entities from performing a risk assessment where the risks involved in the sector in which the entity operates are well understood.

- (23) The FATF has developed standards for jurisdictions to identify, and assess the risks of potential non-implementation or evasion of the targeted financial sanctions related to proliferation financing, and to take action to mitigate those risks. Those new standards introduced by the FATF **■** do not substitute nor undermine the existing strict requirements for countries to implement targeted financial sanctions to comply with the relevant United Nations Security Council Regulations relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. Those existing obligations, as implemented at Union level by Council Decisions 2010/413/CFSP<sup>11</sup> and (CFSP) 2016/849<sup>12</sup> as well as by Council Regulations (EU) No 267/2012<sup>13</sup> and (EU) 2017/1509<sup>14</sup>, remain strict rule-based obligations binding on all natural and legal persons within the Union. ***Given the specific risks of non-implementation and evasion of targeted financial sanctions to which the Union is exposed, it is appropriate to expand the assessment of risks to encompass all targeted financial sanctions adopted at Union level. In this case, too, the risk-sensitive measures implemented under the AML/CFT framework do not remove the absolute obligation to freeze and not make funds or other assets available, directly or indirectly, to designated persons or entities incumbent upon all natural or legal persons in the Union.***

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<sup>11</sup> 2010/413/CFSP: Council Decision of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ L 195, 27.7.2010, p. 39).

<sup>12</sup> Council Decision (CFSP) 2016/849 of 27 May 2016 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2013/183/CFSP (OJ L 141, 28.5.2016, p. 79).

<sup>13</sup> Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ L 88, 24.3.2012, p. 1).

<sup>14</sup> Council Regulation (EU) 2017/1509 of 30 August 2017 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Regulation (EC) No 329/2007 (OJ L 224, 31.8.2017, p. 1).

- (23a) In order to ensure that risks of non-implementation or evasion of targeted financial sanctions are appropriately mitigated, it is important to set out measures that obliged entities are required to implement, including measures to check their customer base against the lists of persons or entities designated under targeted financial sanctions. The requirements incumbent upon obliged entities under this regulation do not remove the absolute obligation to freeze and not make funds or other assets available, directly or indirectly, to individuals or entities subject to targeted financial sanctions that apply to all natural or legal persons in the Union. In addition, the requirements of this Regulation are not intended to replace obligations regarding the screening of customers for the implementation of targeted financial sanctions under other Union acts or under national law.*
- (24) In order to reflect the latest developments at international level, a requirement has been introduced by this Regulation to identify, understand, manage and mitigate risks of potential non-implementation or evasion of **█** targeted financial sanctions at obliged entity level.

- (24a) Listing or designations of individuals or entities by the United Nations' Security Council or the Sanctions Committee are integrated into Union law by means of decisions and regulations adopted under Article 29 of the Treaty on European Union and Article 215 of the Treaty on the Functioning of the European Union respectively that impose targeted financial sanctions on those individuals and entities. The process for adoption of those acts at Union level requires verification of compliance of any designation or listing with fundamental rights granted under the Charter. Between the moment of publication by the United Nations and the moment of entry into application of the Union acts transposing the UN listings or designations, in order to enable the effective application of targeted financial sanctions, obliged entities should keep records of the funds or other assets they hold for customers listed or designated under United Nations' financial sanctions, or customers owned or controlled by listed or designated individuals or entities, , of any attempted transaction and of transactions carried out for the customer, such as for the fulfilment of basic needs of the customer.***
- (24b) In assessing whether a customer who is a legal entity is owned or controlled by individuals designated under targeted financial sanctions, obliged entities should take into account the Council Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU common foreign and security policy and the EU Best Practices for the effective implementation of restrictive measures.***



- (25) It is important that obliged entities take all measures at the level of their management to implement internal policies, **procedures and controls** and to implement AML/CFT requirements. While a **member of the management body** should be identified as being responsible for implementing the obliged entity's policies, controls and procedures, the responsibility for the compliance with AML/CFT requirements should rest ultimately with the **management** body of the entity. *This attribution of responsibility should be without prejudice to national provisions on joint civil or criminal liability of management bodies.* Tasks pertaining to the day-to-day implementation of the obliged entity's AML/CFT policies, **procedures and controls** should be entrusted to **the** compliance officer.
- (25a) *Each Member State may lay down in its national law that an obliged entity subject to prudential rules requiring the appointment of a compliance officer or of a head of the internal audit function may entrust those persons with the functions and responsibilities of AML/CFT compliance officer and internal audit function for AML/CFT purposes. In cases of higher risks or where the size of the obliged entity justifies it, the responsibilities of compliance controls and of the day-to-day operation of the obliged entity's AML/CFT policies and procedures may be carried by two different persons.*

- (26) For effective implementation of AML/CFT measures, it is also vital that the employees of obliged entities, as well as their agents and distributors, who have a role in their implementation understand the requirements and the internal policies, **procedures and controls** in place in the entity. Obligated entities should put in place measures, including training programmes, to this effect. *Where necessary, obliged entities should provide basic training on AML/CFT measures to all those who have a role in implementing it. This includes not only their employees but also their agents and distributors*
- (27) Individuals entrusted with tasks related to an obliged entity's compliance with AML/CFT requirements should undergo assessment of their skills, knowledge, expertise, integrity and conduct. Performance by employees of tasks related to the obliged entity's compliance with the AML/CFT framework in relation to customers with whom they have a close private or professional relationship can lead to conflicts of interests and undermine the integrity of the system. *Such relations may exist at the time of the establishment of the business relationship but may also arise thereafter.* Therefore, **obliged entities should have in place processes to manage and address conflicts of interests. These processes should ensure that employees are** prevented from performing any tasks related to the obliged entity's compliance with the AML/CFT framework in relation to such customers.

- (27a) *There may be situations where individuals who would qualify as obliged entities provide their services in-house to businesses whose activities do not fall within the scope of this Regulation. As these businesses do not act as gatekeepers of the Union's financial system, it is important to clarify that such employees, such as in-house lawyers, are not covered by the requirements of this Regulation. Similarly, individuals carrying out activities that fall within the scope of this Regulation should not be considered obliged entities in their own right when those activities are carried out in the context of their employment with an obliged entity, for example in the case of lawyers or accountants employed with a legal or accounting firm.*
- (28) The consistent implementation of group-wide AML/CFT policies and procedures is key to the robust and effective management of money laundering and terrorist financing risks within the group. To this end, group-wide policies, **procedures and controls** should be adopted and implemented by the parent undertaking. **Entities within the group should be required to exchange information when such sharing is relevant for preventing money laundering and terrorist financing. Information sharing should be subject to sufficient guarantees in terms of confidentiality, data protection and use of information. AMLA should have the task of drawing up draft regulatory standards specifying the minimum requirements of group-wide procedures and policies, including minimum standards for information sharing within the group and the criteria for identifying the parent undertaking for groups whose head office is outside of the Union.**

- (28a) *In order to ensure effective application of AML/CFT requirements to several obliged entities which are directly or indirectly linked with each other and constitute, or are a part of, a group of entities, it is necessary to consider the broadest possible definition of a group. For that purpose, obliged entities should follow applicable accounting rules, which allow to consider structures with various types of economic links as groups. While a traditional group includes a parent undertaking and its subsidiaries, other types of group structures are equally relevant, for example group structures of several parent entities owning a single subsidiary, sometimes referred to such as entities permanently affiliated to a central body referred to in [Article 10 of] Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>15</sup>, or financial institutions which are members of the same institutional protection scheme as referred to in [Article 113(7) of] Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>15</sup>. All these structures are groups in accordance with accounting rules and should therefore be considered as groups for the purposes of the present Regulation.*
- (29) In addition to groups, other structures exist, such as networks or partnerships, in which obliged entities might share common ownership, management and compliance controls. To ensure a level playing field across the sectors whilst avoiding overburdening it, AMLA should identify those situations where similar group-wide policies should apply to those structures, *taking into account the principle of proportionality.*

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<sup>15</sup> **REGULATION (EU) No 575/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L L 176, 27.6.2013), p. 1**

(30) There are circumstances where branches and subsidiaries of obliged entities are located in third countries where the minimum AML/CFT requirements, including data protection obligations, are less strict than the Union AML/CFT framework. In such situations, and in order to fully prevent the use of the Union financial system for the purposes of money laundering and terrorist financing and to ensure the highest standard of protection for personal data of Union citizens, those branches and subsidiaries should comply with AML/CFT requirements laid down at Union level. Where the law of a third country does not permit compliance with those requirements, for example because of limitations to the group's ability to access, process or exchange information due to an insufficient level of data protection or banking secrecy law in the third country, obliged entities should take additional measures to ensure the branches and subsidiaries located in that country effectively handle the risks. AMLA should be tasked with developing draft technical standards specifying the type of such additional measures, ***taking into account the principle of proportionality.***

- (30a) Obligated entities may outsource tasks relating to the performance of certain AML/CFT requirements to a service provider. In the case of outsourcing relationships on a contractual basis between obliged entities and service providers not covered by AML/CFT requirements, any AML/CFT obligations upon those service providers could arise only from the contract between the parties and not from this Regulation. Therefore, the responsibility for complying with AML/CFT requirements should remain entirely with the obliged entity itself. The obliged entity should in particular ensure that, where a service provider is involved for the purposes of remote customer identification, the risk-based approach is respected. Processes or arrangements that contribute to the performance of a requirement under this Regulation, but where the performance of the requirement itself is not carried out by a service provider, such as the use or acquisition of third-party software or the access to databases or screening services by the obliged entity, are not considered to be outsourcing.***
- (30b) The possibility to outsource tasks to a service provider allows obliged entities to decide on how to allocate their resources to comply with this Regulation, but does not relieve them of their obligation to understand how the measures they undertake, including those outsourced to service providers, are appropriate to mitigate the money laundering and terrorist financing risks identified. In order to ensure that such understanding is in place, the final decisions on measures that have a bearing on the implementation of policies, procedures and controls should always rest with the obliged entity.***

- (30c) The notification of outsourcing arrangements to the supervisor does not imply an acceptance of the outsourcing arrangement. This information, and in particular where critical functions are outsourced or where the obliged entity systematically outsources its functions, can however be taken into consideration by supervisors when assessing the obliged entity's systems and controls, and when determining the residual risk profile or in preparation for inspections.*
- (30d) In order for outsourcing relationships to function efficiently, further clarity is needed around the conditions according to which outsourcing takes place. AMLA should have the task of developing guidelines on the conditions under which outsourcing can take place, as well as the roles and responsibilities of the respective parties. To ensure that consistent oversight of outsourcing practices is ensured throughout the Union, the guidelines should also provide clarity on how supervisors should take into account such practices and verify compliance with AML/CFT requirements when obliged entities resort to those practices.*

- (31) Customer due diligence requirements are essential to ensure that obliged entities identify, verify and monitor their business relationships with their clients, in relation to the money laundering and terrorist financing risks that they pose. Accurate identification and verification of data of prospective and existing customers are essential for understanding the risks of money laundering and terrorist financing associated with clients, whether they are natural or legal persons. ***Obliged entities should also understand on whose behalf or for the benefit of whom a transaction is carried out, for example in situations where credit or financial institutions provide accounts to legal professionals for the purposes of receiving or holding their client's funds as defined in Article 4, point (25) of Directive (EU) 2015/2366. In the context of customer due diligence, the person for the benefit of whom a transaction or activity is carried out does not refer to the recipient or beneficiary of a transaction carried out by the obliged entity for their customer.***
- (32) It is necessary to achieve a uniform and high standard of customer due diligence in the Union, relying on harmonised requirements for the identification of customers and verification of their identity, and reducing national divergences to allow for a level playing field across the internal market and for a consistent application of provisions throughout the Union. At the same time, it is essential that obliged entities apply customer due diligence requirements in a risk-based manner. The risk-based approach is not an unduly permissive option for obliged entities. It involves the use of evidence-based decision-making in order to target more effectively the risks of money laundering and terrorist financing facing the Union and those operating within it.



*(32a) Civil society organisations that conduct charitable or humanitarian work in third countries contribute to the Union’s goals of achieving peace, stability democracy and prosperity. Credit and financial institutions play an important role in ensuring that such organisations can continue to conduct their work, by providing access to the financial system and important financial services that allow development and humanitarian funding to be channelled to developing or conflict areas. While obliged entities should be aware that activities conducted in certain jurisdictions expose them to a higher risk of money laundering or terrorist financing, operations of civil society organisations in these jurisdictions should not, alone, result in the refusal to provide financial services or termination of such services, as the risk-based approach requires a holistic assessment of risks posed by individual business relationships, and the application of adequate measures to mitigate the specific risks. While credit and financial institutions remain free to decide with whom they engage in contractual relationships, they should also be mindful of their central role in the functioning of the international financial system and in enabling the movement of funds as defined in Article 4, point (25) of Directive (EU) 2015/2366 or crypto-assets for the important development and humanitarian goals that civil society organisations pursue. They should therefore make use of the flexibility allowed by the risk-based approach to mitigate the risks associated with business relationships in a proportionate manner. Under no circumstances AML/CFT reasons should be invoked to justify commercial decisions as regards prospective or existing clients.*

*(32c) Obligated entities should identify and take reasonable measures to verify the identity of the beneficial owner using reliable documents and sources information. The consultation of beneficial ownership registers allows obligated entities to ensure consistency with information obtained through the verification process and should not be the obligated entity's primary source for verification. When obligated entities identify discrepancies between information held in the beneficial ownership registers and the information they obtain from the customer or other reliable sources in the course of customer due diligence, they should report those discrepancies to the entities in charge of the register so that measures may be taken to resolve inconsistencies. This process contributes to the quality and reliability of information held in beneficial ownership registers, as part of a multi-pronged approach towards ensuring that information contained in beneficial ownership registers is accurate, adequate and up-to-date. In low-risk situations and where the beneficial owners are known to the obligated entity, obligated entities may allow the customer to report discrepancies in case where minor differences are identified that consist of errors of a typographical or similar technical nature.*

*(32e) The risks posed by foreign legal entities and legal arrangements need to be adequately mitigated. Where legal entities incorporated outside the Union or express trust or similar legal arrangements administered outside the Union or whose trustee or person in an equivalent position is established or resides outside the Union are about to enter into business relationships with obliged entities associated with medium-high or high risks of money laundering, its predicate offences or terrorist financing due to the risks associated with the category of legal entity or the sector in which it operates, or the risks associated with the sector in which the obliged entity operates, the registration of the beneficial ownership information in the central register of Member State should be conditional for entering into the business relationship. Registration of the beneficial owner should be a condition for the continuation of the business relationship also in a situation where the business relationship becomes associated with medium-high or high risks after its establishment.*

- (32i)** *The process of establishing of a business relationship or carrying out the steps necessary to conduct an occasional transaction is triggered when the customer expresses an interest in acquiring a product or receiving a service from an obliged entity. The services offered by real estate agents include assisting the customer to find a property to purchase, sell, rent or lease, depending on the case. Such services start to bear relevance for AML/CFT purposes when there is a clear indication that the parties are willing to proceed with the transaction or with the taking of the steps necessary in preparation thereof. This could be, for instance, the moment when an offer for the purchase or rent of the property is made and accepted by the parties. Prior to this, it would not be necessary to conduct due diligence on any prospective customer. Similarly, it would not be proportionate to conduct customer due diligence on persons that have not yet expressed an interest in going forward with the purchase or rental of a specific property, or may never express such an interest.*
- (32j)** *Real estate transactions are exposed to money laundering and terrorist financing risks. In order to mitigate those risks, real estate operators intermediating the buying, selling and letting of immovable property should be subject to the requirements of this Regulation, regardless of their designation or principal business or profession, including property developers when and to the extent that they intermediate in the buying, selling and letting of immovable property.*

*(32k) The anonymity associated with certain electronic money products exposes them to money laundering and terrorist financing risks. There are however significant differences across the sector, and not all electronic money products bear the same level of risk. For example, certain low value electronic money products, such as prepaid gift cards or prepaid vouchers, may present low risks of money laundering or terrorist financing. In order to ensure that the requirements imposed on the sector are commensurate with its risk and do not effectively hamper its operation, it should be possible, in certain proven low-risk circumstances and under strict risk-mitigating conditions, to exempt those products from certain customer due diligence measures, such as the identification and verification of the customer and of the beneficial owner, but not from the monitoring of transactions or of business relationships. Such an exemption may only be granted by supervisors upon verification of the proven low risk having regard to relevant risk factors to be defined by AMLA and in a way that effectively mitigates any risk of money laundering or terrorist financing and that precludes circumvention of AML/CFT rules. In any case, any exemption should be conditional to strict limits regarding the maximum value of the product, its exclusive use to purchase goods or services, and provided that the amount stored cannot be exchanged for other value.*

(33) Obligated entities should not be required to apply due diligence measures on customers carrying out occasional or linked transactions below a certain value, unless there is suspicion of money laundering or terrorist financing. Whereas the EUR 10 000 threshold applies to most occasional transactions, obligated entities which operate in sectors or carry out transactions that present a higher risk of money laundering and terrorist financing should be required to apply customer due diligence for transactions with lower thresholds. To identify the sectors or transactions as well as the adequate thresholds for those sectors or transactions, AMLA should develop dedicated draft regulatory technical standards.

***(33a) There are specific situations where for the purposes of customer due diligence, the customer is not limited to the person transacting with the obliged entity. This is the case, for example, where only one notary is involved in a real estate transaction. In such cases, in order to ensure that adequate checks are carried out on the transaction to detect possible cases of money laundering, its predicate offences or terrorist financing, obliged entities must consider both the buyer and the seller as customers and conduct customer due diligence measures on both parties. This Regulation provides a list of such situations where the customer is not, or is not limited to, the direct customer of the obliged entity. Such a list complements the understanding of who the customer is in typical situations and should not be understood as encompassing an exhaustive interpretation of the term. Similarly, a business relationship should not always require a contractual relationship or other formal engagement as long as the services are provided repeatedly or over a period of time so as to entail an element of duration. The fact that national law precludes obliged entities that are public officials from entering into contractual relationships with customers, such obliged entities should not be construed as prohibiting them from treating a series of transactions as a business relationship for the purposes of AML/CFT.***

- (33b) *The introduction of a Union-wide limit to large cash payment mitigates the risks associated with the use of large cash payments. However, obliged entities that carry out transactions in cash below this amount remain vulnerable to risks of money laundering and terrorist financing as they provide a point of entry into the Union’s financial system. Therefore, it is necessary to require the application of customer due diligence measures to mitigate the risks of misuse of cash. To ensure that the measures are proportionate with the risks posed by transactions of a value lower than EUR 10 000, such measures should be limited to the identification and verification of the customer and the beneficial owner when carrying out occasional transactions in cash of at least EUR 3 000. This provision does not relieve the obliged entity from conducting all customer due diligence measures whenever there is a suspicion of money laundering or terrorist financing, or from reporting suspicious transactions to the FIU.*
- (34) Some business models are based on the obliged entity having a business relationship with a merchant for offering payment initiation services through which the merchant gets paid for the provision of goods or services, and not with the merchant’s customer, who authorises the payment initiation service to initiate a single or one-off transaction to the merchant. In such a business model, the obliged entity’s customer for the purpose of AML/CFT rules is the merchant, and not the merchant’s customer. Therefore, ***with respect to payment initiation services***, customer due diligence obligations should be applied by the obliged entity vis-a-vis the merchant. ***In relation to other financial services that fall within the scope of this Regulation, including where provided by the same operators, the determination of the customer should be done having regard to the services provided.***

*(34a) Gambling activities vary in nature, geographical scope and associated risks. In order to ensure a proportionate and risk-based application of this Regulation, it should be possible for Member States to identify gambling services associated with low money laundering and terrorist financing risks, such as State or private lotteries, or State-administered gambling activities, and to decide not to apply all or some of the requirements of this Regulation to them. Given the potential cross-border effects of national exceptions, it is necessary to ensure a consistent application of a strict risk-based approach across the EU. To that end, the Commission should be enabled to approve Member States' decisions, or to reject them when the exception is not justified by a proven low risk. In any case, no exception should be granted in relation to activities associated with higher risks. This is the case for activities such as casinos, online gambling and sport betting, but not where online gambling activities are administered by the State, whether through direct provision of those services or through regulation of the way in which those gambling services are to be organised, operated and administered. In light of the risks for public health or of criminal activities that may be associated with gambling, national measures regulating its organisation, operation and administration may, where genuinely pursuing goals of public policy, public security or public health, can contribute to reducing the risks to which that activity is exposed.*



***(34b) The EUR 2 000 threshold applicable to gambling service providers is met regardless of whether the customer carries out a single transaction of at least that amount or several smaller transactions which add up to that amount. To that effect, gambling service providers should be able to attribute transactions to a given customer even if they have not yet verified their identity, to be in a position to determine whether and when the threshold has been met. Thus, operators should have systems in place that allow attribution and monitoring of transactions prior to the application of the requirement to conduct customer due diligence. In the case of casinos or other physical gambling premises, it may be impractical to check the customer's identity upon each transaction. In such cases, it should be possible to identify the customer and verify their identity upon entry into the gambling premises, provided that systems are in place to attribute transactions carried out at the gambling premises, including the purchase or exchange of gambling chips, to that customer.***

(35) Directive (EU) 2015/849, despite having harmonised the rules of Member States in the area of customer identification obligations to a certain degree, did not lay down detailed rules in relation to the procedures to be followed by obliged entities. In view of the crucial importance of this aspect in the prevention of money laundering and terrorist financing, it is appropriate, in accordance with the risk-based approach, to introduce more specific and detailed provisions on the identification of the customer and on the verification of the customer's identity, whether in relation to natural or legal persons, legal arrangements such as trusts or entities having legal capacity under national law.

(36) Technological developments and progress in digitalisation enable a secure remote or electronic identification and verification of prospective and existing customers and can facilitate the remote performance of customer due diligence. The identification solutions as set out in Regulation (EU) No 910/2014 of the European Parliament and of the Council and the proposal for an amendment to it in relation to a framework for a European Digital Identity<sup>16</sup> enable secure and trusted means of customer identification and verification for both prospective and existing customers and can facilitate the remote performance of customer due diligence. The electronic identification as set out in that Regulation should be taken into account and accepted by obliged entities for the customer identification process. These means of identification may present, where appropriate risk mitigation measures are in place, a standard or even low level of risk. ***Where such electronic identification is not available to a customer, for example due to the nature of their residence status in a given Member State or their residence in a third country, verification should take place through relevant qualified trust services.***

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<sup>16</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73) and the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity, COM/2021/281 final.

(37) To ensure that the AML/CFT framework prevents illicit funds from entering the financial system, obliged entities should carry out customer due diligence before entering into business relationships with prospective clients, in line with the risk-based approach. Nevertheless, in order not to unnecessarily delay the normal conduct of business, obliged entities may collect the information from the prospective customer during the establishment of a business relationship. Credit and financial institutions may obtain the necessary information from the prospective customers once the relationship is established, provided that transactions are not initiated until the customer due diligence process is successfully completed.

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(39) The customer due diligence process is not limited to the identification and verification of the customer's identity. Before entering into business relationships or carrying out occasional transactions, obliged entities should also assess the purpose and nature of a business relationship *or occasional transaction*. Pre-contractual or other information about the proposed product or service that is communicated to the prospective customer may contribute to the understanding of that purpose. Obligated entities should always be able to assess the purpose and nature of a prospective business relationship *or occasional transaction* in an unambiguous manner. Where the offered service or product enables customers to carry out various types of transactions or activities, obliged entities should obtain sufficient information on the intention of the customer regarding the use to be made of that relationship █

- (40) To ensure the effectiveness of the AML/CFT framework, obliged entities should regularly review the information obtained from their customers, in accordance with the risk-based approach. **Business relationships are likely to evolve as the customer's circumstances and the activities they conduct through the business relationship change over time. In order to maintain a comprehensive understanding of the customer risk profile and conduct meaningful scrutiny of transactions,** obliged entities **should regularly review the information obtained from their customers, in accordance with a risk-based approach. Such reviews should be done on a periodic basis but should also be triggered by changes in relevant circumstances of the customer, when facts and information point towards a potential change in the risk profile or identification details of the customer. To that end, the obliged entity should consider the need to review the customer file in response to material changes such as for example a change in the jurisdictions transacted with, in the value or volume of transactions, upon requests for new products or services that are significantly different in terms of risk or following changes in beneficial ownership.**
- (40a) *In the context of repeated clients for whom customer due diligence measures have recently been conducted, customer due diligence measures may be fulfilled by obtaining a confirmation from the customer that the information and documents held in the records have not changed. Such a method facilitates the application of AML/CFT obligations in situations where the obliged entity is confident that the information pertaining to the customer has not changed, as it is incumbent on obliged entities to ensure that they take adequate customer due diligence measures. In all cases, the confirmation received from the customer, and any changes to the information held on the customer, should be recorded.*

- (40b) Obligated entities may provide more than one product or service in the context of a business relationship. In those circumstances, the requirement to update information, data and documents at regular intervals is not intended to target the individual product or service, but the business relationship in its entirety. It is for the obliged entities to assess, across the range of products or services provided, when the relevant circumstances of the customer change, or when other conditions triggering the updating of the customer due diligence are met, and to proceed to review the customer file in relation to the entirety of the business relationship.**
- (40c) Obligated entities should also set up a monitoring system to detect transactions that might raise money laundering or terrorist financing suspicions. To ensure the effectiveness of the transaction monitoring, obliged entities' monitoring activity should in principle cover all services and products offered to customers and all transactions which are carried out on behalf of the customer or offered to the customer by the obliged entity. However, not all transactions need to be scrutinised individually. The intensity of the monitoring should respect the risk-based approach and be designed around precise and relevant criteria, taking account, in particular, of the characteristics of the customers and the risk level associated with them, the products and services offered, and the countries or geographical areas concerned. AMLA should develop guidelines to ensure that the intensity of the monitoring of business relationships and of transactions is adequate and proportionate to the level of risk.**

***(40d) Terminating the business relationship when customer due diligence measures cannot be complied with reduces the obliged entity's exposure to risks posed by possible changes in the customer's profile. However, there may be situations where the termination should not be pursued due to public interest goals. This is the case, for example, of life insurance contracts, where obliged entities should, where necessary, as an alternative to termination, take measures to freeze the business relationship including by prohibiting any further services to that customer and withholding the payout to beneficiaries, until customer due diligence requirements can be complied with. Additionally, certain products and services require the obliged entity to continue holding or receiving the customer's funds as defined in Article 4, point (25) of Directive (EU) 2015/2366, for example in the context of lending, payment accounts or the taking of deposits. These should however not be treated as an impediment to the requirement to terminate the business relationship, which can be achieved by ensuring that no transactions or activities are carried out for the customer.***

(41) In order to ensure consistent application of this Regulation, AMLA should have the task of drawing up draft regulatory technical standards on customer due diligence. Those regulatory technical standards should set out the minimum set of information to be obtained by obliged entities in order to enter into new business relationships with customers or assess ongoing ones, according to the level of risk associated with each customer. Furthermore, the draft regulatory technical standards should provide sufficient clarity to allow market players to develop secure, accessible and innovative means of verifying customers' identity and performing customer due diligence, also remotely, while respecting the principle of technology neutrality. The Commission should be empowered to adopt those draft regulatory technical standards. Those specific tasks are in line with the role and responsibilities of AMLA as provided in Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]*.

(42) The harmonisation of customer due diligence measures should seek to achieve consistent, and consistently effective, understanding of the risks associated with an existing or prospective customer regardless of where the business relationship is opened in the Union, and their harmonisation will help to achieve this aim. It should also ensure that the information obtained in the performance of customer due diligence is not used by obliged entities to pursue de-risking practices which may result in circumventing other legal obligations, in particular those laid down in Directive **2014/92/EU** of the European Parliament and of the Council<sup>17</sup> or Directive **(EU) 2015/2366** of the European Parliament and of the Council<sup>18</sup>, without achieving the Union's objectives in the prevention of money laundering and terrorist financing. To enable the proper supervision of compliance with the customer due diligence obligations, it is important that obliged entities keep record of the actions undertaken and the information obtained during the customer due diligence process, irrespective of whether a new business relationship is established with them and of whether they have submitted a suspicious transaction report upon refusing to establish a business relationship. Where the obliged entity takes a decision to not enter into a business relationship with a prospective customer, the customer due diligence records should include the grounds for such a decision. This will enable supervisory authorities to assess whether obliged entities have appropriately calibrated their customer due diligence practices and how the entity's risk exposure evolves, as well as help building statistical evidence on the application of customer due diligence rules by obliged entities throughout the Union.

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<sup>17</sup> Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214).

<sup>18</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

- (43) The approach for the review of existing customers in the current AML/CFT framework is already risk-based. However, given the higher risk of money laundering, its predicate offences and terrorist financing associated with certain intermediary structures, that approach might not allow for the timely detection and assessment of risks. It is therefore important to ensure that clearly specified categories of existing customers are also monitored on a regular basis.
- (44) Risk itself is variable in nature, and the variables, on their own or in combination, may increase or decrease the potential risk posed, thus having an impact on the appropriate level of preventive measures, such as customer due diligence measures.
- (45) In low risk situations, obliged entities should be able to apply simplified customer due diligence measures. This does not equate to an exemption or absence of customer due diligence measures. It rather consists in a simplified or reduced set of scrutiny measures, which should however address all components of the standard customer due diligence procedure. In line with the risk-based approach, obliged entities should nevertheless be able to reduce the frequency or intensity of their customer or transaction scrutiny, or rely on adequate assumptions with regard to the purpose of the business relationship or use of simple products. The regulatory technical standards on customer due diligence should set out the specific simplified measures that obliged entities may implement in case of lower risk situations identified in the Supranational Risk Assessment of the Commission. When developing draft regulatory technical standards, AMLA should have due regard to preserving social and financial inclusion.



- (46) It should be recognised that certain situations present a greater risk of money laundering or terrorist financing. Although the identity and business profile of all customers should be established with the regular application of customer due diligence requirements, there are cases in which particularly rigorous customer identification and verification procedures are required. Therefore, it is necessary to lay down detailed rules on such enhanced due diligence measures, including specific enhanced due diligence measures for cross-border correspondent relationships.
- (47) Cross-border correspondent relationships with a third-country's respondent institution are characterised by their on-going, repetitive nature. Moreover, not all cross-border correspondent banking services present the same level of money laundering and terrorist financing risks. Therefore, the intensity of the enhanced due diligence measures should be determined by application of the principles of the risk based approach. However, the risk based approach should not be applied when interacting with third-country's respondent institutions that have no physical presence where they are incorporated ***or with unregistered and unlicensed entities providing crypto-asset services***. Given the high risk of money laundering and terrorist financing inherent in shell **■ institutions**, credit institutions and financial institutions should refrain from entertaining any correspondent relationship with such shell **■ institutions, as well as with counterparts in third countries that allow their accounts to be used by shell institutions. To avoid misuse of the Union's financial system to provide unregulated services, crypto-assets service providers should also ensure that their accounts are not used by nested exchanges and should have in place policies and procedures to detect any such attempt.**

*(47a) In the context of the performance of their oversight function, supervisors may identify situations where breaches of AML/CFT requirements by third country correspondent institutions, or weaknesses in their implementation of the AML/CFT requirements cause risks to the Union's financial system. In order to mitigate those risks, it should be possible for AMLA to address recommendations to credit and financial institutions in the Union in order to inform them of its views regarding the deficiencies of those third country correspondent institutions. Those recommendations should be issued where AMLA and financial supervisors in the Union agree that the breaches and weaknesses in place in the third country correspondent institutions are likely to affect the risk exposure of correspondent relationships by credit and financial institutions in the Union, and provided that the third country correspondent institution and its supervisor have had the opportunity to provide their views. In order to preserve the well-functioning of the Union's financial system, credit and financial institutions should take adequate measures in response to recommendations by AMLA, including by abstaining from entering into or continuing a correspondent relationship unless they can put in place sufficient mitigating measures to address the risks posed by the correspondent relationship.*

(48) In the context of enhanced due diligence measures, obtaining approval from senior management for establishing business relationships does not need to imply, in all cases, obtaining approval from the board of directors. It should be possible for such approval to be granted by someone with sufficient knowledge of the entity's money laundering and terrorist financing risk exposure and of sufficient seniority to take decisions affecting its risk exposure.

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(49) In order to protect the proper functioning of the Union financial system from money laundering and terrorist financing, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission to identify third countries, whose shortcomings in their national AML/CFT regimes represent a threat to the integrity of the Union's internal market. The changing nature of money laundering and terrorist financing threats from outside the Union, facilitated by a constant evolution of technology and of the means at the disposal of criminals, requires that quick and continuous adaptations of the legal framework as regards third countries be made in order to address efficiently existing risks and prevent new ones from arising. The Commission should take into account, *as a baseline for its assessment*, information from international organisations and standard setters in the field of AML/CFT, such as FATF public statements, mutual evaluation or detailed assessment reports or published follow-up reports, and adapt its assessments to the changes therein, where appropriate. *The Commission should act within 20 days of ascertaining shortcomings in a third country's AML/CFT regime that pose a threat to the integrity of the Union's internal market.*

(50) Third countries “subject to a call for action” by the relevant international standard-setter (the FATF) present significant strategic deficiencies of a persistent nature in their legal and institutional AML/CFT frameworks and their implementation which are likely to pose a high risk to the Union’s financial system. The persistent nature of the significant strategic deficiencies, reflective of the lack of commitment or continued failure by the third country to tackle them, signal a heightened level of threat emanating from those third countries, which requires an effective, consistent and harmonised mitigating response at Union level. Therefore, obliged entities should be required to apply the whole set of available enhanced due diligence measures to occasional transactions and business relationships involving those high-risk third countries to manage and mitigate the underlying risks. Furthermore, the high level of risk justifies the application of additional specific countermeasures, whether at the level of obliged entities or by the Member States. Such approach would avoid divergence in the determination of the relevant countermeasures, which would expose the entirety of Union’s financial system to risks. *Where Member States identify specific risks that are not mitigated, they may apply additional countermeasures, in which case they should notify the Commission thereof. Where the Commission considers that those risks are of relevance for the internal market, it may update the delegated act to include the necessary additional countermeasures to mitigate those risks. Where the Commission considers that those counter-measures are not necessary and undermine the proper functioning of the Union's internal market, it should be empowered to decide that the Member State put an end to the specific counter-measure. Prior to triggering the procedure for that decision, the Commission should provide an opportunity to the Member State concerned to submit its views on the consideration of the Commission.* Given its technical expertise, AMLA can provide useful input to the Commission in identifying the appropriate countermeasures.

- (51) Compliance weaknesses in both the legal and institutional AML/CFT framework and its implementation of third countries which are subject to “increased monitoring” by the FATF are susceptible to be exploited by criminals. This is likely to represent a risk for the Union’s financial system, which needs to be managed and mitigated. The commitment of these third countries to address identified weaknesses, while not eliminating the risk, justifies a mitigating response, which is less severe than the one applicable to high-risk third countries. In these cases, Union’s obliged entities should apply enhanced due diligence measures to occasional transactions and business relationships when dealing with natural persons or legal entities established in those third countries that are tailored to the specific weaknesses identified in each third country. Such granular identification of the enhanced due diligence measures to be applied would, in line with the risk-based approach, also ensure that the measures are proportionate to the level of risk. To ensure such consistent and proportionate approach, the Commission should be able to identify which specific enhanced due diligence measures are required in order to mitigate country-specific risks. Given AMLA’s technical expertise, it can provide useful input to the Commission to identify the appropriate enhanced due diligence measures.
- (52) Countries that are not publicly identified as subject to calls for actions or increased monitoring by international standard setters might still pose a *specific and serious* threat to the integrity of the Union’s financial system, **■** *which may be due to either compliance weaknesses or significant strategic deficiencies of a persistent nature in their AML/CFT regime. To mitigate those specific risks, that cannot be mitigated under Articles 23 and 24, it should be possible for the Commission to take action in exceptional circumstances by identifying such third countries, based on a clear set of criteria and with the support of AMLA.* According to the level of risk posed to the Union’s financial system, the Commission should require the application of either all enhanced due diligence measures and country-specific countermeasures, as it is the case for high-risk third countries, or country-specific enhanced customer due diligence, such as in the case of third countries with compliance weaknesses.

- (52a) In order to ensure a consistent identification of such third countries, the power to adopt acts in accordance with Article 291 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission. Such implementing act shall set out the methodology for the identification in exceptional circumstances of third countries posing a specific and serious threat to the Union's financial system, while not being publicly identified as subject to calls for actions or increased monitoring by international standard setters. This methodology should include in particular how the criteria will be assessed and the process for the interaction with those third countries and for the involvement of Member States and AMLA in the preparatory stages of such identification.***
- (53) Considering that there may be changes in the AML/CFT frameworks of those third countries or in their implementation, for example as result of the country's commitment to address the identified weaknesses or of the adoption of relevant AML/CFT measures to tackle them, which could change the nature and level of the risks emanating from them, the Commission should regularly review the identification of those specific enhanced due diligence measures in order to ensure that they remain proportionate and adequate.

- (54) Potential external threats to the Union's financial system do not only emanate from third countries, but can also emerge in relation to specific customer risk factors or products, services, transactions or delivery channels which are observed in relation to a specific geographical area outside the Union. There is therefore a need to identify money laundering and terrorist financing trends, risks and methods to which Union's obliged entities may be exposed. AMLA is best placed to detect any emerging ML/TF typologies from outside the Union, to monitor their evolution with a view to providing guidance to the Union's obliged entities on the need to apply enhanced due diligence measures aimed at mitigating such risks.
- (55) Relationships with individuals who hold or who have held important public functions, within the Union or internationally, and particularly individuals from countries where corruption is widespread, may expose the financial sector to significant reputational and legal risks. The international effort to combat corruption also justifies the need to pay particular attention to such persons and to apply appropriate enhanced customer due diligence measures with respect to persons who are or who have been entrusted with prominent public functions and with respect to senior figures in international organisations. Therefore, it is necessary to specify measures which obliged entities should apply with respect to transactions or business relationships with politically exposed persons. To facilitate the risk-based approach, AMLA should be tasked with issuing guidelines on assessing the level of risks associated with a particular category of politically exposed persons, their family members or persons known to be close associates.

*(55a) Risks associated with holders of prominent public functions are not limited to the national level but can also exist at regional and/or municipal levels. This is particularly true at the local level for densely populated areas, such as cities, which alongside the regional level often manage significant public funds and access to critical services or permits, with a resulting risk of corruption and associated money laundering. Therefore, it is necessary to include in the category of prominent public functions the heads of regional and local authorities, including groupings of municipalities and metropolitan regions, with at least 50 000 inhabitants. At the same time, it should be acknowledged that the geography and administrative organisation of Member States vary significantly, and in certain Member States it may be appropriate to set a lower threshold to cover the relevant local authorities on the basis of risk. When Member States decide to set lower thresholds, they should communicate those lower thresholds to the Commission.*

*(55b) The members of the administrative, management or supervisory bodies of enterprises controlled by the state, regional or local authorities can also be exposed to risks of corruption and associated money laundering. Given the size of their budget and the funds under management, such risks are particularly acute in relation to senior executive members in enterprises controlled by the state. Risks may also arise in relation to enterprises of a significant size controlled by regional and local authorities. As a result, the senior executives in enterprises controlled by regional or local authorities should be considered as politically exposed persons where those enterprises qualify as medium sized or large undertakings or groups as defined in Article 3 of Directive 2013/34/EU. However, recognising the geographical and administrative organisational differences, and the powers and responsibilities associated with these enterprises and their senior executives, Member States should be able to choose to set a lower annual turnover threshold on the basis of risk. In such a case, Member States should notify the Commission of its decision.*



- (56) In order to identify politically exposed persons in the Union, lists should be issued by Member States indicating the specific functions which, in accordance with national laws, regulations and administrative provisions, qualify as prominent public functions. Member States should request each international organisation accredited on their territories to issue and keep up to date a list of prominent public functions at that international organisation. The Commission should be tasked with compiling and issuing a list, which should be valid across the Union, as regards persons entrusted with prominent public functions in Union institutions or bodies. . ***In order to ensure a harmonised approach to the identification and notification of prominent public functions, the Commission should be empowered to adopt implementing acts setting out the format to be used for Member States' notifications, and delegated acts supplementing the categories of prominent public functions identified by this Regulation, where they are common across Member States.***
- (57) When customers are no longer entrusted with a prominent public function, they can still pose a higher risk, for example because of the informal influence they could still exercise, or because their previous and current functions are linked. It is essential that obliged entities take into consideration those continuing risks and apply one or more enhanced due diligence measures until such time that the individuals are deemed to pose no further risk, and in any case for not less than 12 months following the time when they are no longer entrusted with a prominent public function.

- (58) Insurance companies often do not have client relationships with beneficiaries of the insurance policies. However, they should be able to identify higher risk situations, such as when the proceeds of the policy benefit a politically exposed person. To determine whether this is the case, the insurance policy should include reasonable measures to identify the beneficiary, as if this person were a new client. Such measures can be taken at the time of the payout or at the time of the assignment of the policy, but not later.
- (59) Close private and professional relationships can be abused for money laundering and terrorist financing purposes. For that reason, measures concerning politically exposed persons should also apply to their family members and persons known to be close associates. Properly identifying family members and persons known to be close associates may depend on the socio-economic and cultural structure of the country of the politically exposed person. Against this background, AMLA should have the task of issuing guidelines on the criteria to use to identify persons who should be considered as close associate.
- (59a) The circle of family members who may be abused by politically exposed persons does not only cover parents and descendants but may also include siblings. This is particularly the case for categories of politically exposed persons who hold senior central government posts. In recognition, however, of differing socio-economic and cultural structures in existence at national level, which may influence the potential for abuse of sibling relationships, Member States should be able to apply a broader scope for the designation of siblings as family members of politically exposed persons to adequately mitigate the risks of abuse of those relationships. When Member States decide to apply a broader scope, they should communicate the details of that broader scope to the Commission.***

- (60) The requirements relating to politically exposed persons, their family members and close associates, are of a preventive and not criminal nature, and should not be interpreted as stigmatising politically exposed persons, *their family members or close associates* as being involved in criminal activity. Refusing a business relationship with a person simply on the basis of a determination that they are *a politically exposed person or a family member or a close associate of* a politically exposed person is contrary to the letter and spirit of this Regulation.
- (60a) *Given the vulnerability of residency-by-investment schemes to money laundering, tax crimes, corruption, evasion of sanctions and the potential associated significant security threats for the Union as a whole, it is appropriate that obliged entities carry out, as a minimum, specific enhanced customer due diligence with respect to customers who are third-country nationals who are in the process of applying for residence rights in a Member State within the framework of those schemes..*

***(60b) The provision of bespoke asset management services to individuals with a high level of wealth may expose credit and financial institutions and trust and company service providers to specific risks including those arising from the complex and often personalized nature of such services. It is therefore necessary to specify a set of enhanced due diligence measures that should be applied, as a minimum, when such business relationships are deemed to pose a high risk of money laundering, its predicate offences or terrorist financing. The determination that a customer holds EUR 50 000 000 total minimum wealth takes into account financial and investable wealth including cash and cash equivalents, whether held as deposits or in savings products, as well as investments such as stocks, bonds and mutual funds, even when they are held under long-term agreements with that obliged entity. Furthermore, the value of the customer's real estate, excluding his or her private residence, should be taken into account. For the purposes of making that determination, credit and financial institutions and trust and company service providers need not carry out or request a precise calculation of the customer's total wealth. Rather, such entities should take measures to establish whether a customer holds wealth of EU 50 000 000 or more in financial, investable or real estate wealth.***

(61) In order to avoid repeated customer identification procedures, it is appropriate, subject to suitable safeguards, to allow obliged entities to rely on the customer information collected by other obliged entities. Where an obliged entity relies on another obliged entity, the ultimate responsibility for customer due diligence should remain with the obliged entity which chooses to rely on the customer due diligence performed by another obliged entity. The obliged entity relied upon should also retain its own responsibility for compliance with AML/CFT requirements, including the requirement to report suspicious transactions and retain records.

- (61a) *The introduction of harmonised AML/CFT requirements across the Union, including with regard to group-wide policies and procedures, information exchange and reliance allows obliged entities operating within a group to leverage to the maximum the systems in place within that group in situations concerning the same customers. These rules allow not only achieving consistent and efficient implementation of AML/CFT rules across the group but also benefit from economies of scale at group level, for example by making it possible for obliged entities within the group to rely on the outcomes of processes adopted by other obliged entities within the group to comply with their customer identification and verification requirements.*
- (62) Obligated entities may outsource tasks relating to the performance of **■** *certain AML/CFT requirements to a* service provider, unless they are established in third countries that are designated as high-risk, as having compliance weaknesses or as posing a threat to the Union's financial system. In the case of **■** outsourcing relationships on a contractual basis between obliged entities and service providers not covered by AML/CFT requirements, any AML/CFT obligations upon those **■** service providers could arise only from the contract between the parties and not from this Regulation. Therefore, the responsibility for complying with AML/CFT requirements should remain entirely with the obliged entity itself. The obliged entity should in particular ensure that, where **■** *a* service provider is involved for the purposes of remote customer identification, the risk-based approach is respected. *Processes or arrangements that contribute to the performance of a requirement under this Regulation, but where the performance of the requirement itself is not carried out by a service provider, such as the use or acquisition of third-party software or the access to databases or screening services by the obliged entity, are not considered to be outsourcing.*

- (62a) The possibility to outsource tasks to a service provider allows obliged entities to decide on how to allocate their resources to comply with this Regulation, but does not relieve them of their obligation to understand how the measures they undertake, including those outsourced to service providers, are appropriate to mitigate the money laundering and terrorist financing risks identified. In order to ensure that such understanding is in place, the final decisions on measures that have a bearing on the implementation of policies, procedures and controls should always rest with the obliged entity.*
- (62b) The notification of outsourcing arrangements to the supervisor does not imply an acceptance of the outsourcing arrangement. This information, and in particular where critical functions are outsourced or where the obliged entity systematically outsources its functions, can however be taken into consideration by supervisors when assessing the obliged entity's systems and controls, and when determining the residual risk profile or in preparation for inspections.*

(63) In order for third party reliance ■ to function efficiently, further clarity is needed around the conditions according to which reliance takes place. AMLA should have the task of developing guidelines on the conditions under which third-party reliance ■ can take place, as well as the roles and responsibilities of the respective parties. To ensure that consistent oversight of reliance ■ is ensured throughout the Union, the guidelines should also provide clarity on how supervisors should take into account such practices and verify compliance with AML/CFT requirements when obliged entities resort to those practices.

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(64) The concept of beneficial ownership was introduced by Directive (EU) 2015/849 to increase transparency of complex corporate structures. The need to access accurate, up-to-date and adequate information on the beneficial owner is a key factor in tracing criminals who might otherwise be able to hide their identity behind such opaque structures. Member States are currently required to ensure that both corporate and other legal entities as well as express trusts and other similar legal arrangements obtain and hold adequate, accurate and current information on their beneficial ownership. However, the degree of transparency imposed by Member States varies. The rules are subject to divergent interpretations, and this results in different methods to identify beneficial owners of a given *legal* entity or *legal* arrangement. This is due, inter alia, to inconsistent ways of calculating indirect ownership of *a legal* entity or *legal* arrangement, *and differences between the legal systems of the Member States*. This hampers the transparency that was intended to be achieved. It is therefore necessary to clarify the rules to achieve a consistent definition of beneficial owner and its application across the internal market.

- (65) *The application of the rules for identifying the beneficial ownership of corporate and other legal entities, as well as of legal arrangements, may give rise to implementation questions when relevant stakeholders are confronted with concrete cases, especially in instances of complex corporate structures, where the criteria of ownership interest and control coexist, or for the purposes of determining indirect ownership or control. In order to support the application of these rules by corporate and other legal entities and obliged entities, and consistent with the harmonisation goal of this Regulation, the Commission may adopt guidelines setting out how rules to identify the beneficial owner(s) in different scenarios should be applied, including through the use of case examples.*
- (66) A meaningful identification of the beneficial owners requires a determination of whether control is exercised via other means. The determination of control through an ownership interest is necessary but not sufficient and it does not exhaust the necessary checks to determine the beneficial owners. The test on whether any natural person exercises control via other means is not a subsequent test to be performed only when it is not possible to determine an ownership interest. The two tests, namely that of control through an ownership interest and that of control via other means, should be performed in parallel.



**(66a) *An ownership of 25% or more of the shares or voting rights or other ownership interest in general establishes the beneficial ownership of the legal entity. Ownership interest should encompass both control rights and rights that are significant in terms of receiving a benefit, as is a right to a share of profits or other internal resources or liquidation balance. There may, however, be situations where the risk that certain categories of legal entities be misused for money laundering or terrorist financing purposes are higher, for example due to the specific higher risk sectors in which these legal entities operate. In such situations, enhanced transparency measures are necessary to dissuade criminals from setting up or infiltrating these entities, either through direct or indirect ownership or control. In order to ensure that the Union is able to adequately mitigate such varying levels of risk, it is necessary to empower the Commission to identify those categories of legal entities that should be subject to lower beneficial transparency thresholds. To this end, Member States should inform the Commission when they identify categories of legal entities that are exposed to higher money laundering and terrorist financing risks. In those notifications, Member States may also indicate a lower ownership threshold that they consider may mitigate those risks. Such identification should be ongoing and should rely on the results of the national and supranational risk assessments as well as on relevant analyses and reports produced by AMLA, Europol or other Union bodies that have a role in the prevention, investigation and prosecution of money laundering and terrorist financing. That lower threshold should be of a sufficiently low level to mitigate the higher risks that corporate entities be misused for criminal purposes. To that end, that lower threshold should in general not be set at more than 15% of the shares or voting rights or other ownership interest. However, there may be cases in which, on the basis of a risk-sensitive assessment, a higher threshold would be more proportionate to address the identified risks. In those cases, it should be possible for the Commission to set the threshold between 15% and 25% of the ownership interest.***

*(66b) By their complex nature, multi-layered ownership and control structures make the identification of the beneficial owners more difficult. The concept of 'ownership or control structure' is intended to describe the way in which a legal entity is indirectly owned or controlled, or in which a legal arrangement is indirectly controlled, as a result of the relationships that exist between legal entities or arrangements across multiple layers. In order to ensure a consistent approach throughout the internal market, it is necessary to clarify the rules that apply to those situations. For this purpose, it is necessary to assess simultaneously whether any natural person has a direct or indirect shareholding with 25% or more of the shares or voting rights or other ownership interest, and whether any natural person controls the direct shareholder with 25% or more of the shares or voting rights or other ownership interest in the corporate entity. In case of indirect shareholding, the beneficial owners should be identified by multiplying the shares in the ownership chain. To this end, all shares directly or indirectly owned by the same natural person should be added together. This requires that shareholding on every level of ownership be taken into account. Where 25% of the shares or voting rights or other ownership interest in the corporate entity are owned by a shareholder that is a legal entity other than a corporate entity, the beneficial ownership should be determined having regard to the specific structure of the shareholder, including whether any natural person exercises control through other means over a shareholder.*

*(66c) The determination of the beneficial owner of a legal entity in situations where the shares of the legal entity are held in a legal arrangement, or where they are held by a foundation or similar legal entity, might be more difficult in view of the different nature and identification criteria of beneficial ownership between legal entities and legal arrangements. It is therefore necessary to set out clear rules to deal with these situations of multi-layered structure. In such cases, all beneficial owners of the legal arrangement or structurally and functionally similar legal entity such as a foundation, should be the beneficial owners of the legal entity whose shares are held in the legal arrangement or held by the foundation.*

*(66d) A common understanding of the concept of control and a more precise definition of the means of control are necessary to ensure consistent application of the rules across the internal market. Control should be understood as the effective ability to impose one's will on the corporate entity's decision-making on substantive issues. The usual mean of control is a majority share of voting rights ('control through ownership interest of the corporate entity'). The position of beneficial owner can also be established by control via other means without having significant, or any, ownership interest. For this reason, in order to ascertain all individuals that are the beneficial owners of a legal entity, control should be identified independently of ownership interest. Control can generally be exercised by any means, including legal and non-legal means. These means may be taken into account for assessing whether control via other means is exercised, depending on the specific situation of each legal entity.*

- (66e) *Indirect ownership or control may be mediated by multiple links in a chain or by multiple individual or interlinked chains. A link in a chain may be any person or organisation or a legal arrangement without legal personality. The relations between the links may consist of ownership interest or voting rights or other means of control. In such cases, where ownership interest and control coexist in the ownership structure, specific and detailed rule on the identification of the beneficial ownership are needed to support a harmonised approach to the identification of beneficial owners.*
- (67) In order to ensure effective transparency, the widest possible range of legal entities and arrangements incorporated or created in the territory of Member States should be covered by beneficial ownership rules. This includes legal entities other than corporate ones and **legal** arrangements similar to **express** trusts. Due to differences in the legal systems of Member States, those broad categories encompass a variety of different organisational structures. Member States should notify to the Commission a list of the types of corporate and other legal entities where the beneficial owners is identified in line with the rules for the identification of beneficial owners for corporate entities. ■
- (68) ■ *The specific nature of certain* legal entities, such as ■ *associations, trade unions, political parties or churches, does not lend them a meaningful identification of* beneficial owners ■ *based of ownership interests or membership. In those cases, however, it may be the case that the senior managing officials exercise control over the* legal ■ *entity through other means. In those cases, they should be reported as the beneficial owners.*

- (68a)** *To ensure the consistent identification of beneficial owners of express trusts and similar legal entities, such as foundations, or arrangements, it is necessary to lay down harmonised beneficial ownership rules. Member States are required to notify to the Commission a list of the types of legal entities and legal arrangements similar to express trusts where the beneficial owners is identified according to the identification of beneficial owners for express trusts and similar legal entities or arrangements. The Commission should be empowered to adopt, by means of an implementing act, a list of legal arrangements and legal entities governed by national law of Member States, which have a structure or function similar to express trusts.*
- (68b)** *Discretionary trusts allow their trustee(s) discretion on the allocation of the trust assets or benefits derived from them. As such, no beneficiaries or class of beneficiaries is determined from the outset, but rather a pool of persons from among which the trustees can choose the beneficiaries, or persons who will become beneficiaries should the trustees not exercise their discretion. As recognised by the recent revision of FATF standards regarding legal arrangements, such discretion may be misused and allow for the obfuscation of beneficial owners should a minimum level of transparency not be imposed for discretionary trusts too, as transparency on beneficiaries would only be achieved upon the exercise of the trustees' discretion. Therefore, in order to ensure an adequate and consistent transparency for all types of legal arrangements, it is important that in the case of discretionary trusts information is also collected on the objects of a trustee's power, and on the default takers who would receive the assets or benefits should the trustees fail to exercise their discretion. There are situations where objects of a power or default takers may be a class. In those cases, information on the class should be collected, as well as information on the individual persons who are selected from the class.*

- (68b) To ensure the consistent identification of beneficial owners of undertakings for collective investment and alternative investment funds, it is necessary to lay down harmonised beneficial ownership rules. Regardless of whether the undertakings for collective investment and alternative investment funds exist in the Member State in the form of a legal entity with legal personality, as a legal arrangement without legal personality, or in any other form, the approach to the identification of the beneficial owner should be consistent with their purpose and function.*
- (68d) The characteristics of express trusts and similar legal arrangements in Member States may vary. In order to ensure a harmonised approach, it is appropriate to set out common principles for the identification of such arrangements. Express trusts are trusts created at the initiative of the settlor. Trusts set up by law or that do not result from the explicit intent of the settlor to create them should be excluded from the scope of this Regulation. Express trusts are usually created in the form of a document e.g. a written deed or written instrument of trust and usually fulfil a business or personal need. Legal arrangements similar to express trusts are arrangements without legal personality which are similar in structure or functions. The determining factor is not the designation of the type of legal arrangement, but the fulfilment of the basic features of the definition of an express trust, i.e. the settlor's intention to place the assets under the administration and control of a certain person for specified purpose, usually of a business or personal nature, such as the benefit of the beneficiaries. To ensure the consistent identification of beneficial owners of legal arrangements similar to express trusts, Member States should notify to the Commission a list of the types of legal arrangements similar to express trusts. Such notification should be accompanied by an assessment justifying the identification of certain legal arrangements as similar to express trusts as well as why other legal arrangements have been considered as dissimilar in structure or function from express trusts. In performing such assessment, Member States should take into consideration all legal arrangements that are governed under their law.*

**(68e) *In some cases of legal entities such as foundations, express trusts and similar legal arrangements, it is not possible to identify individual beneficiaries because they have yet to be determined, in such cases, beneficial ownership information should include instead a description of the class of beneficiaries and its characteristics. As soon as beneficiaries within the class are designated, they shall be beneficial owners. Furthermore, there are specific types of legal persons and legal arrangements where beneficiaries exist, but their identification is not proportionate in respect of the money laundering and terrorist financing risks associated with those legal persons or legal arrangements. This can be the case for example of regulated products such as pension schemes within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council, employee financial ownership or participation schemes, or of legal entities or legal arrangements with a non-profit or charitable purpose, provided the risks associated with such legal persons and legal arrangements are low. In these cases, an identification of the class of beneficiaries should be sufficient.***

**(68e) *Pension schemes regulated by Directive (EU) 2016/2341 of the European Parliament and of the Council are regulated products which are subject to stringent supervisory standards and present low risks of money laundering and terrorist financing. When such pension schemes are set up in the form of a legal arrangement, its beneficiaries are employees and workers which rely on those products, linked to their employment contracts, for the management of their retirement benefits. Due the specific nature of the retirement benefit, which carries low risk of money laundering and terrorist financing, it would not be proportionate to require the identification of each of those beneficiaries, and the identification of the class and its characteristic is sufficient to fulfil transparency obligations.***

- (69) A consistent approach to the beneficial ownership transparency regime also requires ensuring that the same information is collected on beneficial owners across the internal market. It is appropriate to introduce precise requirements concerning the information that should be collected in each case. That information includes a minimum set of personal data of the beneficial owner, the nature and extent of the beneficial interest held in the legal entity or legal arrangement and information on the legal entity or legal arrangement, ***which are necessary to ensure the appropriate identification of the natural person who is the beneficial owner and the reasons why that natural person has been identified as the beneficial owner.***
- (69a) ***An effective framework of beneficial ownership transparency requires information to be collected through various channels. Such multi-pronged approach includes the information held by the legal entity or trustee of an express trust or persons holding an equivalent position in a similar legal arrangement themselves, the information obtained by obliged entities in the context of customer due diligence, as well as the information held in beneficial ownership registers. Cross-checking of information among these pillars contributes to ensuring that each pillar holds adequate, accurate and up-to-date information. To this end, and in order to avoid that discrepancies are identified because of different approaches, it is important to identify those categories of data that should always be collected in order to ensure the beneficial ownership information is adequate. This includes basic information on the legal entity and legal arrangement, which is the precondition allowing the entity or arrangement itself to understand its control structure, whether through ownership or other means.***



***(69b) When legal entities and legal arrangements are part of a complex structure, clarity on their ownership or control structure is critical in order to ascertain who their beneficial owners are. To this end, it is important that legal entities and legal arrangements clearly understand the relationships by which they are indirectly owned or controlled, including all those intermediary steps between the beneficial owners and the legal entity or legal arrangement itself, whether these are in the form of other legal entities and legal arrangements or of nominee relationships. Identification of the ownership and control structure allows to identify the ways by which ownership is established or control can be exercised over a legal entity and is therefore essential for a comprehensive understanding of the position of the beneficial owner. The beneficial owner information should therefore always include a description of the relationship structure.***

(70) Underpinning an effective framework on beneficial ownership transparency is the knowledge by corporate and other legal entities of the natural persons who are their beneficial owners. Thus, all corporate and other legal entities in the Union should obtain and hold adequate, accurate and current beneficial ownership information. That information should be retained for five years and the identity of the person responsible for retaining the information should be reported to the registers. That retention period is equivalent to the period for retention of the information obtained within the application of AML/CFT requirements, such as customer due diligence measures. In order to ensure the possibility to cross-check and verify information, for instance through the mechanism of discrepancy reporting, it is justified to ensure that the relevant data retention periods are aligned.

- (70a) *To ensure that beneficial ownership information is up-to-date, the legal entity should both update such information immediately after any change and periodically verify it. The time limit for updating the information should be reasonable in view of possible complex situations. Confirmation of the timeliness of the data should take place on a regular basis and various mechanisms can be used to do so. Legal entities should be able to verify accuracy of the information in the register also by using the different channels and instruments e.g. together with the submission of the financial statements, of other repetitive interaction with public authorities. Using the interconnection of registers and databases of a Member State may allow legal entity to validate information effectively.*
- (71) Corporate and other legal entities should take all necessary measures to identify their beneficial owners. There may however be cases where no natural person is identifiable who ultimately owns or exerts control over an entity. In such exceptional cases, provided that all means of identification are exhausted, the senior managing officials can be reported *instead of the beneficial owners* when providing beneficial ownership information to obliged entities in the course of the customer due diligence process or when submitting the information to the central register. *Although they are identified in these situations, the senior managing officials are not the beneficial owners.* Corporate and legal entities should keep records of the actions taken in order to identify their beneficial owners, especially when they rely on this last resort measure, which should be duly justified and documented.

*(71a) Difficulties in obtaining the information should not be a valid reason to avoid the identification effort and resort to reporting the senior management instead. Therefore, legal entities should always be able to substantiate their doubts as to the veracity of the information collected. Such justification should be proportionate to the risk of the legal entity and the complexity of its ownership structure. In particular, the record of the actions taken should be promptly provided to competent authorities when required and, on a risk-sensitive basis, may include resolutions of the board of directors and minutes of their meetings, partnership agreements, trust deeds, informal arrangements determining powers equivalent to powers of attorney or other contractual agreements and documentation. In cases where the absence of beneficial owners is evident with respect to the specific form and structure of legal entity, the justification should be understood as a reference to this fact, i.e. that the legal entity does not have a beneficial owner due to its specific form and structure, where, for example, there are no ownership interests in it, nor can it be ultimately controlled by other means. For the purpose of the statement of the absence of the beneficial owner, it should be possible to use universal formulations or uniform forms.*

**(71b) In view of the purpose of determining beneficial ownership, which is to ensure effective transparency of legal persons, it is proportionate to exempt certain entities from the obligation to identify their beneficial owner. Such a regime can only be applied to entities for which the identification and registration of their beneficial owners is not useful and where the similar level of transparency is achieved by means other than beneficial ownership. In this respect, bodies governed by public law of the Member State should not be obliged to determine their beneficial owner. Directive 2004/109/EC of the European Parliament and of the Council<sup>19</sup> introduced strict transparency requirements for companies whose securities are admitted to trading on a regulated market. In certain circumstances, those transparency requirements can achieve an equivalent transparency regime to the beneficial ownership transparency rules set out in this Regulation. This is the case when the control over the company is exercised through voting rights, and the ownership or control structure of the company only includes natural persons. In those circumstances, there is no need to apply beneficial ownership requirements to those listed companies. The exemption for legal entities from the obligation to determine their own beneficial owner and to register it should not affect the obligation of obliged entities to identify the beneficial owner of a customer in customer due diligence when performing customer due diligence.**

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<sup>19</sup> **Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).**

(72) There is a need to ensure a level playing field among the different types of legal forms and to avoid the misuse of *express* trusts and legal arrangements, which are often layered in complex structures to further obscure beneficial ownership. Trustees of any express trust administered *or established or residing* in a Member State should thus be responsible for obtaining and holding adequate, accurate and current beneficial ownership information regarding the *express* trust, and for disclosing their status and providing this information to obliged entities carrying out customer due diligence. Any other beneficial owner of the *express* trust should assist the trustee in obtaining such information.

*(72a) The nature of legal arrangements and the lack of publicity about their structures and purpose places a particular onus on the trustees or persons in equivalent positions in similar legal arrangements to obtain and hold all relevant information on the legal arrangement. Such information should enable an identification of the legal arrangement, the assets placed therein or administered through it, and any agent or service provider to the trust. In order to facilitate the activities of competent authorities in the prevention, detection and investigation of money laundering, its predicate offences and terrorist financing, it is important that trustees keep this information up-to-date and that they hold it for a sufficient amount of time after they cease their role as trustees or equivalent. The provision of a basic amount of information on the legal arrangement to obliged entities is also necessary to enable them to fully ascertain the purpose of the business relationship or occasional transaction involving the legal arrangement, adequately assess the associated risks, and implement commensurate measures to mitigate those risks.*

- (73) In view of the specific structure of certain legal **arrangements**, and the need to ensure sufficient transparency about their beneficial ownership, such **legal arrangements similar to *express* trusts** should be subject to equivalent beneficial ownership requirements as those that apply to express trusts.
- (74) Nominee arrangements may allow the concealment of the identity of the beneficial owners, because a nominee might act as the director or shareholder of a legal entity while the nominator is not always disclosed. Those arrangements might obscure the beneficial ownership and control structure, when beneficial owners do not wish to disclose their identity or role within them. There is thus a need to introduce transparency requirements in order to avoid that these arrangements are misused and to prevent criminals from hiding behind persons acting on their behalf. ***The relationship between nominee and nominator is not determined by whether it has an effect on the public or third parties. Although nominee shareholders whose name appears in public or official records would formally have independent control over the company, it should be required to disclose whether they are acting on the instructions of someone else on the basis of a private concert.*** Nominee shareholders and nominee directors of corporate or other legal entities should maintain sufficient information on the identity of their nominator as well as of any beneficial owner of the nominator and disclose them as well as their status to the corporate or other legal entities. The same information should also be reported by corporate and other legal entities to obliged entities, when customer due diligence measures are performed.

(75) The risks posed by foreign corporate entities and legal arrangements, which are misused to channel proceeds of funds into the Union's financial system, need to be mitigated. Since beneficial ownership standards in place in third countries might not be sufficient to allow for the same level of transparency and timely availability of beneficial ownership information as in the Union, there is a need to ensure adequate means to identify the beneficial owners of foreign corporate entities or legal arrangements in specific circumstances. Therefore, legal entities incorporated outside the Union and express trusts or similar legal arrangements administered outside the Union should be required to disclose their beneficial owners **■ when** they operate in the Union by entering into a business relationship with a Union's obliged entity or by acquiring real estate in the Union *or certain high value goods from obliged entities located in the Union, as well as when they are awarded a public procurement for goods, services or concessions. There may be variations in the risk exposure across Member States, including depending on the category or type of activities carried out by obliged entities and on the attractiveness for criminals of real estate properties in their territory. Therefore, where Member States identify situations of higher risk, they should be able to take additional mitigating measures to address those risks.*

*(75a) The registration requirements for foreign legal entities and legal arrangements should be proportionate to the risks associated with their operations in the Union. Given the open nature of the Union internal market, and the use made by foreign legal entities of the services offered by obliged entities established in the Union, many of which are associated with lower risks of money laundering, its predicate offences or terrorist financing, it is appropriate to limit the registration requirement to legal entities that belong to high-risk sectors or that operate in higher risk categories or that obtain services from obliged entities operating in sectors associated with higher risks. The private nature of legal arrangements, and the obstacles in accessing beneficial ownership information in case of foreign legal arrangements, justify the application of a registration requirement irrespective of the level of risk associated with the obliged entity providing services to the legal arrangement, or, where relevant, with the sector in which the legal arrangement operates. Reference to the supranational risk assessment under Article 7 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final] should be understood to refer to the supranational risk assessment issued by the Commission pursuant to Article 6 of Directive (EU) 2015/849 until the first issuance of the report under Article 7.*



(76) In order to encourage compliance and ensure an effective beneficial ownership transparency, beneficial ownership requirements need to be enforced. To this end, Member States should apply sanctions for breaches of those requirements. Those sanctions should be effective, proportionate and dissuasive, and should not go beyond what is required to encourage compliance. Sanctions introduced by Member States should have an equivalent deterrent effect across the Union on the breaches of beneficial ownership requirements. ***Sanctions may for example include fines for legal entities and trustees or persons holding an equivalent position in a similar legal arrangement for outdated, inaccurate or incorrect beneficial ownership data, the strike-off of legal entities that fail to comply with the obligation to hold beneficial ownership information or to submit beneficial ownership information within a given time limit, fines for beneficial owners and other persons who fail to cooperate with legal entity or trustee of an express trust or similar legal arrangement, fines for nominee shareholders and nominee directors who fail to comply with the obligation of disclosure or private law consequences for undisclosed beneficial owners as prohibition of the payment of profits or prohibition of the exercise of voting rights.***

**(76a) *With a view to ensuring a consistent approach to the sanctioning of breaches of beneficial ownership requirements across the internal market, the Commission is empowered to adopt delegated acts to define the categories of breaches subject to sanctions and the persons liable for such breaches, as well as indicators on the level of gravity and criteria to determine the level of sanctions. Furthermore, in order to support the determination of the level of sanctions, and consistent with the harmonisation goal of this Regulation, the Commission may adopt guidelines setting out the base amounts that should apply to each category of breach.***

**(77) Suspicious transactions, including attempted transactions, and other information relevant to money laundering, its predicate offences and terrorist financing, should be reported to the FIU, which should serve as a single central national unit for receiving and, analysing reported suspicions and for disseminating to the competent authorities the results of its analyses. All suspicious transactions, including attempted transactions, should be reported, regardless of the amount of the transaction, *and the reference to suspicious transactions should be interpreted as including suspicious activities, behaviour and patterns of transactions.* Reported information may also include threshold-based information. *In order to support obliged entities' detection of suspicions, AMLA should issue guidance on indicators of suspicious activity or behaviour. Given the evolving risk environment, that guidance should be reviewed regularly, and should not prejudice the issuance by FIUs of guidance or indicators on ML/TF risks and methods identified at national level.* The disclosure of information to the FIU in good faith by an obliged entity or by an employee or director of such an entity should not constitute a breach of any restriction on disclosure of information and should not involve the obliged entity or its directors or employees in liability of any kind.**

- (77a) ) Obligated entities should establish comprehensive reporting regimes encompassing all suspicions, regardless of the value or perceived severity of the associated criminal activity. At the same time, they should be aware of the expectations of FIUs and should, as far as possible, tailor their detection systems and analytical processes in line with the risks affecting the Member State in which they are established and, where necessary, prioritise their analysis towards addressing those key risks.**
- (77b) Transactions should be assessed on the basis of information known or which should be known to the obliged entity. This includes relevant information from agents, distributors and service providers. Where the underlying predicate offence is not known or apparent to the obliged entity, the role of identifying and reporting suspicious transactions is fulfilled more efficiently by focusing on detecting suspicions and submitting reports promptly. In those cases, the predicate offence need not be specified by the obliged entity when reporting a suspicious transaction to the FIU, if it is not known to them. Where this information is available, it should be included in the report. As gatekeepers of the Union's financial system, obliged entities should also be able to submit a report where they know or suspect that funds have been or will be used to carry out criminal activities, such as the purchase of illicit goods, even if the information available to them does not indicate that the funds used originate from illicit sources.**

(78) Differences in suspicious transaction reporting obligations between Member States may exacerbate the difficulties in AML/CFT compliance experienced by obliged entities that have a cross-border presence or operations. Moreover, the structure and content of the suspicious transaction reports have an impact on the FIU's capacity to carry out analysis and on the nature of that analysis, and also affects FIUs' abilities to cooperate and to exchange information. In order to facilitate obliged entities' compliance with their reporting obligations and allow for a more effective functioning of FIUs' analytical activities and cooperation, AMLA should develop draft **■ implementing** standards specifying a common template for the reporting of suspicious transactions to be used as a uniform basis throughout the Union.

(79) FIUs should be able to obtain swiftly from any obliged entity all the necessary information relating to their functions. Their unfettered and swift access to information is essential to ensure that flows of money can be properly traced and illicit networks and flows detected at an early stage. The need for FIUs to obtain additional information from obliged entities based on a suspicion of money laundering or financing of terrorism might be triggered by a prior suspicious transaction report reported to the FIU, but might also be triggered through other means such as the FIU's own analysis, intelligence provided by competent authorities or information held by another FIU. FIUs should therefore be able, in the context of their functions, to obtain information from any obliged entity, even without a prior report being made. **█ In particular, records of financial transactions and transfers carried out through a bank, payment or crypto-asset account are critical for FIUs' analytical work. However, due to the lack of harmonisation, at present credit and financial institutions provide FIUs with transaction records in different formats, which are not readily useable for analysis. Considering the cross-border nature of FIUs' analytical activities, the disparity of formats and difficulties of processing transaction records hamper the exchange of information █ among FIUs and the development of cross-border financial analyses. AMLA should therefore develop draft implementing standards specifying a common template for the provision of transaction records by credit and financial institutions to FIUs to be used as uniform basis throughout the Union.**

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- (79a) Obligated entities should reply to a request for information by the FIU as soon as possible and, in any case, within five working days of receipt of the request or any other shorter or longer time frame imposed by the FIU. In justified and urgent cases, the obliged entity should be able to respond to the FIU's request within 24 hours. This does not include indiscriminate requests for information to the obliged entities in the context of the FIU's analysis, but only information requests based on sufficiently defined conditions. An FIU should also be able to obtain such information on a request made by another Union FIU and to exchange the information with the requesting FIU. Requests to obliged entities vary in nature. For example, complex requests may necessitate more time and warrant an extended time frame for response. To that end, FIUs should be able to grant extended timeframes to obliged entities, provided this does not have a negative impact on the FIU's analysis.*
- (80) For certain obliged entities, Member States should have the possibility to designate an appropriate self-regulatory body to be informed in the first instance instead of the FIU. In accordance with the case-law of the European Court of Human Rights, a system of first instance reporting to a self-regulatory body constitutes an important safeguard for upholding the protection of fundamental rights as concerns the reporting obligations applicable to lawyers. Member States should provide for the means and manner by which to achieve the protection of professional secrecy, confidentiality and privacy.

- (81) **Notaries, lawyers and other independent legal professionals, auditors, external accountants and tax advisors should be allowed not to transmit to the FIU or to a self-regulatory body any information received from, or obtained on, one of their clients, in the course of ascertaining the legal position of their client, or in performing their task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings, whether such information is received or obtained before, during or after such proceedings. However, such an exception should not apply where the legal professional is taking part in money laundering or terrorist financing, the legal advice is provided for the purposes of money laundering or terrorist financing, or where the legal professional knows that the client is seeking legal advice for the purposes of money laundering or terrorist financing. Knowledge and purpose can be inferred from objective, factual circumstances. Legal advice sought in relation to ongoing judicial proceedings should not be deemed to constitute legal advice for the purposes of money laundering or terrorist financing. In line with the risk-based approach, Member States should be able to identify, additional situations where, having regard to the high risk of money laundering, its predicate offences or terrorist financing associated with certain types of transactions, the exemption from the reporting requirement does not apply. When identifying such additional situations, Member States have to ensure compliance in particular with Articles 7 and 47 of the Charter.**



- (82) Obligated entities should exceptionally be able to carry out suspicious transactions before informing the **FIU** where refraining from doing so is impossible or likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation. However, this exception should not be invoked in relation to transactions concerned by the international obligations accepted by the Member States to freeze without delay funds or other assets of terrorists, terrorist organisations or those who finance terrorism, in accordance with the relevant United Nations Security Council resolutions.
- (83) Confidentiality in relation to the reporting of suspicious transactions and to the provision of other relevant information to FIUs is essential in order to enable the competent authorities to freeze and seize assets potentially linked to money laundering, its predicate offences or terrorist financing. A suspicious transaction is not an indication of criminal activity. Disclosing that a suspicion has been reported may tarnish the reputation of the persons involved in the transaction and jeopardise the performance of analyses and investigations. Therefore, obliged entities and their directors and employees, ***or persons in a comparable position, including agents and distributors***, should not inform the customer concerned or a third party that information is being, will be, or has been submitted to the FIU, whether directly or through the self-regulatory body, or that a money laundering or terrorist financing analysis is being, or may be, carried out. The prohibition of disclosure should not apply in specific circumstances concerning, for example, disclosures to competent authorities and self-regulatory bodies when performing supervisory functions, or disclosures for law enforcement purposes or when the disclosures take place between obliged entities that belong to the same group.

- (84) Criminals move illicit proceeds through numerous intermediaries to avoid detection. Therefore it is important to allow obliged entities to exchange information not only between group members, but also in certain cases between credit and financial institutions and other entities that operate within networks, with due regard to data protection rules. ***Outside of a partnership for information sharing, the disclosure permitted among certain categories of obliged entities in cases involving the same transaction should only take place with regard to the specific transaction that is carried out between or facilitated by those obliged entities, and not with regard to connected previous or subsequent transactions.***
- (84a) ***The exchange of information among obliged entities and, where applicable, competent authorities, may increase the possibilities for detecting illicit financial flows concerning money laundering, terrorism financing and proceeds of crime. For this reason, obliged entities and competent authorities should be able to exchange information in the framework of an information sharing partnership when they deem such sharing to be necessary for compliance with their AML/CFT obligations and tasks. Information sharing should be subject to robust safeguards relating to confidentiality, data protection, use of information and criminal procedure. Obligated entities should not rely solely on the information received through the exchange of information to draw conclusions on the ML/TF risk of the customer or transaction or to take decisions regarding the establishment or termination of a business relationship or the carrying out of a transaction. As recognised in Directive (EU) 2014/92 of the European Parliament and of the Council, the smooth functioning of the internal market and the development of a modern, socially inclusive economy increasingly depends on the universal provision of payment services. Therefore, access to basic financial services should not be denied on the basis of information exchanged among obliged entities or between obliged entities and competent authorities or AMLA.***

**(84b) Compliance with the requirements of this Regulation is subject to checks by supervisors. Where obliged entities exchange information in the framework of a partnership for information sharing, those checks should also include compliance with the conditions set out under this Regulation for those exchanges of information. While supervisory checks should be risk-based, they should be performed in any event prior to the commencement of the activities of the partnership for information sharing. Partnerships for information sharing that involve the processing of personal data may result in a high risk to the rights and freedoms of natural persons. Therefore, a data protection impact assessment pursuant to Regulation (EU) 2016/679 should be carried out prior to the start of the activities of the partnership. In the context of supervisory checks, supervisors should consult, where relevant, data protection authorities, which alone are competent for assessing the data protection impact assessment. The data protection provisions and all requirements concerning the confidentiality of information on suspicious transactions contained in this Regulation apply to information shared in the framework of a partnership. Consistent with Regulation EU 2016/679, Member States may maintain or introduce more specific provisions to adapt the application of that Regulation to provide more specific requirements in relation to the processing of personal data exchanged in the framework of a partnership for information sharing.**

- (84c) *While partnership for information sharing enable the exchange of operational information and personal data under strict safeguards, those exchanges should not replace the requirements under this regulation to report any suspicion to the competent FIU. Therefore, when obliged entities identify suspicious activities on the basis of information obtained in the context of a partnership for information sharing, they should report that suspicion to the FIU in the Member State where they are established. Information that indicates suspicious activity is subject to stricter rules that prohibit its disclosure and should only be shared where necessary for the purposes of preventing and combating money laundering, its predicate offences and terrorist financing and subject to safeguards protecting fundamental rights, the confidentiality of FIU work and the integrity of law enforcement investigations.*
- (85) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>20</sup> applies to the processing of personal data for the purposes of this Regulation. The fight against money laundering and terrorist financing is recognised as an important public interest ground by all Member States. *Obliged entities should pay particular attention to the principles requiring that the personal data processed in the course of compliance with their AML/CFT obligations be accurate, reliable and up to date. For the purposes of complying with this Regulation, obliged entities may adopt processes that enable automated individual decision-making, including profiling, as set out under Article 22 of Regulation (EU) 2016/679. When doing so, the requirements set out in this Regulation to safeguard the rights of persons subject to such processes should apply in addition to any other relevant requirements set out in Union law concerning the protection of personal data.*

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<sup>20</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

(86) It is essential that the alignment of the AML/CFT framework with the revised FATF Recommendations is carried out in full compliance with Union law, in particular as regards Union data protection law and the protection of fundamental rights as enshrined in the Charter. Certain aspects of the implementation of the AML/CFT framework involve the collection, analysis, storage and sharing of data. Such processing of personal data should be permitted, while fully respecting fundamental rights, only for the purposes laid down in this Regulation, and for carrying out customer due diligence, ongoing monitoring, analysis and reporting of suspicious transactions, identification of the beneficial owner of a legal person or legal arrangement, identification of a politically exposed person and sharing of information by credit institutions and financial institutions and other obliged entities. The collection and subsequent processing of personal data by obliged entities should be limited to what is necessary for the purpose of complying with AML/CFT requirements and personal data should not be further processed in a way that is incompatible with that purpose. In particular, further processing of personal data for commercial purposes should be strictly prohibited.

- (86a) *The processing of certain categories of sensitive data as defined under Article 9 of Regulation 2016/679 may give rise to risks to the fundamental rights and freedoms of the subjects of those data. To minimise the risks that the processing of such data by obliged entities results in discriminatory or biased outcomes that adversely impact the customer, such as the termination or refusal to enter into a business relationship, obliged entities should not take decisions solely on the basis of information in their possession concerning special categories of personal data within the meaning of Regulation 2016/679 where that information bears no relevance to the money laundering or terrorist financing risk posed by a transaction or relationship. Similarly, in order to ensure that the intensity of customer due diligence is based on a holistic understanding of the risks associated with the customer, obliged entities should not base the application of a higher or lower level of customer due diligence measures solely on the basis of sensitive data that they possess on the customer.*
- (87) The revised FATF Recommendations demonstrate that, in order to be able to cooperate fully and comply swiftly with information requests from competent authorities for the purposes of the prevention, detection or investigation of money laundering and terrorist financing, obliged entities should maintain, for at least five years, the necessary information obtained through customer due diligence measures and the records on transactions. In order to avoid different approaches and in order to fulfil the requirements relating to the protection of personal data and legal certainty, that retention period should be fixed at five years after the end of a business relationship or an occasional *transaction*. *There may be situations where the functions of competent authorities cannot be effectively carried out if the relevant information held by obliged entities is deleted pursuant to the lapse of the retention period. In such cases, competent authorities should be able to request obliged entities to retain information on a case-by-case basis for a longer period, which should not exceed five years.*

- (88) *When the notion of competent authorities refers to investigating and prosecuting authorities, it should be interpreted as including the European Public Prosecutor's Office (EPPO) with regard to the Member States that participate in the enhanced cooperation on the establishment of the EPPO. ■*
- (88a) *Disseminations by FIUs play a crucial role in detecting possible criminal activities under the competence of the EPPO, OLAF, or in relation to which Europol and Eurojust can provide operational support in accordance with their respective mandates, at an early stage, and can support prompt and effective investigations and prosecutions. Information shared with the EPPO and OLAF by FIUs should include grounds for the suspicion that a crime under the EPPO's and OLAF's respective competencies might be or has been perpetrated, and be accompanied by all relevant information that the FIU holds and which can support action, including relevant financial and administrative information. When the EPPO and OLAF request information from FIUs, it is equally important that FIUs are able to share all the information they hold in relation to the case. In accordance with the applicable provisions in their founding legal instruments, the EPPO and OLAF should inform FIUs about the steps taken in relation to the information that was disseminated and any relevant outcomes.*

- (89) For the purpose of ensuring the appropriate and efficient administration of justice during the period between the entry into force and application of this Regulation, and in order to allow for its smooth interaction with national procedural law, information and documents pertinent to ongoing legal proceedings for the purpose of the prevention, detection or investigation of possible money laundering or terrorist financing, which have been pending in the Member States on the date of entry into force of this Regulation, should be retained for a period of five years after that date, and it should be possible to extend that period for a further five years.
- (90) The rights of access to data by the data subject are applicable to the personal data processed for the purpose of this Regulation. However, access by the data subject to any information related to a suspicious transaction report would seriously undermine the effectiveness of the fight against money laundering and terrorist financing. Exceptions to and restrictions of that right in accordance with Article 23 of Regulation (EU) 2016/679 may therefore be justified. The data subject has the right to request that a supervisory authority referred to in Article 51 of Regulation (EU) 2016/679 checks the lawfulness of the processing and has the right to seek a judicial remedy referred to in Article 79 of that Regulation. The supervisory authority may also act on an ex-officio basis. Without prejudice to the restrictions to the right to access, the supervisory authority should be able to inform the data subject that all necessary verifications by the supervisory authority have taken place, and of the result as regards the lawfulness of the processing in question.



- (91) Obligated entities might resort to the services of other private operators. However, the AML/CFT framework should apply to obligated entities only, and obligated entities should retain full responsibility for compliance with AML/CFT requirements. In order to ensure legal certainty and to avoid that some services are inadvertently brought into the scope of this regulation, it is necessary to clarify that persons that merely convert paper documents into electronic data and are acting under a contract with an obligated entity, and persons that provide credit institutions or financial institutions solely with messaging or other support systems for transmitting funds *as defined in Article 4, point (25) of Directive (EU) 2015/2366* or with clearing and settlement systems do not fall within the scope of this Regulation.
- (92) Obligated entities should obtain and hold adequate and accurate information on the beneficial ownership and control of legal persons. As bearer shares accord the ownership to the person who possesses the bearer share certificate, they allow the beneficial owner to remain anonymous. To ensure that those shares are not misused for money laundering or terrorist financing purposes, companies - other than those with listed securities on a regulated market or whose shares are issued as intermediated securities - should convert all existing bearer shares into registered shares. In addition, only bearer share warrants in intermediated form should be allowed.

- (93) The anonymity of crypto-assets exposes them to risks of misuse for criminal purposes. Anonymous crypto-asset **■ accounts as well as other anonymising instruments**, do not allow the traceability of crypto-asset transfers, whilst also making it difficult to identify linked transactions that may raise suspicion or to apply to adequate level of customer due diligence. In order to ensure effective application of AML/CFT requirements to crypto-assets, it is necessary to prohibit the provision and the custody of anonymous crypto-asset **■ accounts or accounts allowing for the anonymisation or the increased obfuscation of transactions** by crypto-asset service providers, **including through anonymity-enhancing coins. The prohibition does not apply to providers of hardware and software or providers of self-hosted wallets insofar as they do not possess access to or control over those crypto-assets wallets .**
- (94) The use of large cash payments is highly vulnerable to money laundering and terrorist financing; this has not been sufficiently mitigated by the requirement for traders in goods to be subject to anti-money laundering rules when making or receiving cash payments of EUR 10 000 or more. At the same time, differences in approaches among Member States have undermined the level playing field within the internal market to the detriment of businesses located in Member States with stricter controls. It is therefore necessary to introduce a Union-wide limit to large cash payments of EUR 10 000. Member States should be able to adopt lower thresholds and further stricter provisions **to the extent that they pursue legitimate objectives in the public interest. Given that the AML/CFT framework is based on the regulation of the business economy, the limit should not apply to payments between natural persons who are not acting in a professional function. In addition, in order to ensure that the Union-wide limit does not unintentionally create barriers for persons who are unbanked to make payments, or for business to deposit the income from their activities in their accounts, payments or deposits made at the premises of credit institutions, payment institutions or electronic money institutions should also be exempted from the application of the limit.**

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- (94b) Cash payments or deposits made at the premises of credit institutions, payment service providers and electronic money providers that exceed the threshold for large cash payments should not, by default, be considered an indicator or suspicion of money laundering, its predicate offences or terrorist financing. The reporting of such transactions enables the FIU to assess and identify patterns concerning the movement of cash and while such information contributes to the FIU's operational or strategic analyses, the nature of threshold-based disclosures makes them distinct from suspicious transaction reports. To that effect, threshold-based disclosures do not replace the requirement to report suspicious transactions or to apply enhanced due diligence measures in situations of higher risk. FIUs may require the reports to be made within a specific timeframe, which may include the periodic submission on an aggregated basis.*
- (94c) There may be cases where reasons of force majeure, such as those caused by natural catastrophes, result in a widespread loss of access to payment mechanisms other than cash. In those cases, Member States should be able to suspend the application of the limit on large cash payments. Such a suspension is an extraordinary measure and should only be applied where necessary as a response to exceptional, duly justified, situations. An impossibility to access financial services does not constitute a valid ground for the suspension of the limit where this is attributable to a Member State's failure to guarantee that consumers have access to financial infrastructure across the entirety of its territory.*

- (95) The Commission should assess the costs, benefits and impacts of **adjusting** the limit to large cash payments at Union level with a view to levelling further the playing field for businesses and reducing opportunities for criminals to use cash for money laundering. This assessment should consider in particular the most appropriate level for a harmonised limit to cash payments at Union level considering the current existing limits to cash payments in place in a large number of Member States, the enforceability of such a limit at Union level and the effects of such a limit on the legal tender status of the euro.
- (96) The Commission should also assess the costs, benefits and impacts of lowering the 25% threshold for the identification of beneficial owners when control is exercised through ownership *interest*. This assessment should consider in particular the lessons learned from Member States or third countries having introduced lower thresholds.
- (96a) Risks associated with high-value goods may also extend to other goods that are highly portable, such as garments and clothing accessories. The Commission should therefore assess the need to extend the scope of obliged entities to include traders in such high-value goods. In addition, given that this Regulation introduces for the first time at Union level mandatory threshold-based disclosures in relation to certain high-value goods, the Commission should assess, based on the experience gathered with implementation of this Regulation, the need of extending the scope of goods subject to threshold-based disclosures, and of harmonising the format for such disclosures in light of the use made by FIUs. Finally, given the risks associated with high-value goods in free trade zones, the Commission should assess the necessity of expanding the scope of information to be reported by operators trading and storing high-value goods in those free trade zones.*

(97) In order to ensure consistent application of AML/CFT requirements, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to supplement this Regulation by adopting delegated acts identifying high-risk third countries, third countries with compliance weaknesses and countries that pose a *specific and serious* threat to the Union's financial system and defining harmonised and proportionate enhanced due diligence measures as well as, where relevant, mitigating measures, *additional cases of higher risk and associated enhanced due diligence measures, common additional categories of prominent public functions, categories of corporate entities associated with higher risk and the associated lower thresholds for identifying beneficial ownership through ownership interest and the categories of breaches of beneficial ownership transparency requirements, the liable persons, the indicators to establish the gravity of those breaches and the criteria to be taken into account when setting the level of sanctions*, as well as the regulatory technical standards setting out the minimum requirements of group-wide policies, controls and procedures and the conditions under which structures which share common ownership, management or compliance controls are required to apply group-wide policies, controls and procedures, the actions to be taken by groups when the laws of third countries do not permit the application of group-wide policies, controls and procedures and supervisory measures, the sectors and transactions subject to lower thresholds for the performance of customer due diligence, and the information necessary for the performance of customer due diligence. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>21</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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<sup>21</sup> OJ L 123, 12.5.2016, p. 1.

- (98) In order to ensure uniform conditions for the application of this Regulation, implementing powers should be conferred on the Commission in order to ***decide of the suspension of national countermeasures, set out the methodology for the identification of third countries posing a specific and serious threat to the Union's financial system, set out the format for the establishment and communication of the national lists of prominent public functions,*** identify legal ***entities and legal*** arrangements similar to express trusts governed by the national laws of Member States as well as to adopt implementing technical standards specifying the format to be used for the reporting of suspicious transactions ***and for the provision of transaction records, as well as the format to be used by FIUs for the dissemination of information to the EPPO.*** Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>22</sup>.
- (99) This Regulation respects the fundamental rights and observes the principles recognised by the Charter, in particular the right to respect for private and family life (Article 7 of the Charter), the right to the protection of personal data (Article 8 of the Charter) and the freedom to conduct a business (Article 16 of the Charter).
- (100) In accordance with Article 21 of the Charter, which prohibits discrimination based on any grounds, obliged entities should perform risk assessments in the context of customer due diligence without discrimination.

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<sup>22</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (101) When drawing up a report evaluating the implementation of this Regulation, the Commission should give due consideration to the respect of the fundamental rights and principles recognised by the Charter.
- (102) Since the objective of this Regulation, namely to prevent the use of the Union's financial system for the purposes of money laundering and terrorist financing, cannot be sufficiently achieved by the Member States and can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (103) The European Data Protection Supervisor has been consulted in accordance with Article 42 of Regulation (EU) 2018/1725 [and delivered an opinion on ...<sup>23</sup>],

HAVE ADOPTED THIS REGULATION:

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<sup>23</sup> OJ C , , p. .

**CHAPTER I**  
**GENERAL PROVISIONS**

**SECTION 1**  
**SUBJECT MATTER AND DEFINITIONS**

*Article 1*

**Subject matter**

This Regulation lays down rules concerning:

- (a) the measures to be applied by obliged entities to prevent money laundering and terrorist financing;
- 
- (b) beneficial ownership transparency requirements for legal entities, *express trusts and similar legal* ■ arrangements;
- 
- (c) measures to limit the misuse of ■ *anonymous* instruments.



## *Article 2*

### **Definitions**

For the purposes of this Regulation, the following definitions apply:

- (1) ‘money laundering’ means the conduct as set out in Article 3, paragraphs 1 and 5 of Directive (EU) 2018/1673 including aiding and abetting, inciting and attempting to commit that conduct, whether the activities which generated the property to be laundered were carried out on the territory of a Member State or on that of a third country. Knowledge, intent or purpose required as an element of that conduct may be inferred from objective factual circumstances;
- (2) ‘terrorist financing’ means the conduct set out in Article 11 of Directive (EU) 2017/541 including aiding and abetting, inciting and attempting to commit that conduct, whether carried out on the territory of a Member State or on that of a third country. Knowledge, intent or purpose required as an element of that conduct may be inferred from objective factual circumstances;
- (3) ‘criminal activity’ means criminal activity as defined in Article 2(1) of Directive (EU) 2018/1673, as well as fraud affecting the Union’s financial interests as defined in Article 3(2) of Directive (EU) 2017/1371, passive and active corruption as defined in Article 4 (2) and misappropriation as defined in Article 4(3), second subparagraph of that Directive;

- (4) **'funds' or** 'property' means property as defined in Article 2(2) of Directive (EU) 2018/1673;
- (5) 'credit institution' means **■** :
- (a) *a credit institution as defined in Article 4(1), point (1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>24</sup>;*
- (b) *a branch of a credit institution referred to in point (a), as defined in article 4(1) point 17 of Regulation (EU) No 575/2013 of the European Parliament and of the Council, when located in the Union, whether its head office is situated in a Member State or in a third country;*
- (6) 'financial institution' means:
- (a) an undertaking other than a credit institution or an investment firm, which carries out one or more of the activities listed in points (2) to (12), (14) and (15) of Annex I to Directive 2013/36/EU of the European Parliament and of the Council<sup>25</sup>, including the activities of currency exchange offices (bureaux de change), *but excluding the activities referred to in point (8) of Annex I to Directive (EU) 2015/2366 of the European Parliament and of the Council, or an undertaking ■* the principal activity of which is to acquire holdings, including a financial holding company, *a mixed financial holding company* and a *financial mixed ■ activity* holding company;

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<sup>24</sup> ***Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).***

<sup>25</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

- I**
- (b) an insurance undertaking as defined in Article 13, point (1) of Directive 2009/138/EC of the European Parliament and of the Council<sup>26</sup>, insofar as it carries out life or other investment-related assurance activities covered by that Directive, including insurance holding companies and mixed-activity insurance holding companies as defined, respectively, in Article 212(1), points (f) and (g) of Directive 2009/138/EC;
  - (c) an insurance intermediary as defined in Article 2(1), point (3) of Directive (EU) 2016/97 of the European Parliament and of the Council<sup>27</sup> where it acts with respect to life insurance and other investment-related *insurance* services, ***with the exception of an insurance intermediary that does not collect premiums or amounts intended for the customer and which acts under the responsibility of one or more insurance undertakings or intermediaries for the products which concern them respectively;***
  - (d) an investment firm as defined in Article 4(1), point (1) of Directive 2014/65/EU of the European Parliament and of the Council<sup>28</sup>;

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<sup>26</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

<sup>27</sup> Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L 26, 2.2.2016, p. 19).

<sup>28</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173, 12.6.2014, p. 349).

**(da)** a collective investment undertaking, in particular:

- (i) an undertaking for collective investment in transferable securities as defined in Article 1(2) of Directive 2009/65/EC and its management company as defined in Article 2(1)(b) of that Directive or an investment company authorised in accordance with that Directive and which has not designated a management company, that makes available for purchase units of UCITS in the Union;
- (ii) an alternative investment fund as defined in Article 4(1), **point (a)** of Directive 2011/61/EU and its alternative investment fund manager as defined in Article 4(1), **point (b)** of that Directive that fall within the scope set out in Article 2 of that Directive;

**(ea)** *a central securities depository as defined in Article 2 point (1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council;*

**(eb)** *a creditor as defined in Article 4, point (2) of Directive 2014/17/EU of the European Parliament and of the Council<sup>29</sup> and in Article 3, point (b) of Directive 2008/48/EC of the European Parliament and of the Council<sup>30</sup>*

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<sup>29</sup> *Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2017, p. 34).*

<sup>30</sup> *Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).*

*(ec) a credit intermediary as defined in Article 4, point (5) of Directive 2014/17/EU and in Article 3, point (f) of Directive 2008/48/EC; when holding the funds as defined in Article 4, point (25) of Directive (EU) 2015/2366 in connection with the credit agreement, with the exception of the credit intermediary carrying out activities under the responsibility of one or more creditors or credit intermediaries*

*(ed) a crypto-asset service provider;*

(f) branches of financial institutions as defined in points (a) to *(ed)*, when located in the Union, whether their head office is situated in a Member State or in a third country;

■

*(6a) ‘crypto-asset service provider’ means a crypto-asset service provider as defined in Article 3(1), point (15), of Regulation (EU) 2023/... [please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final] where performing one or more crypto-asset services as defined in Article 3(1), point (16), of that Regulation, with the exception of providing advice on crypto-assets as referred to in Article 3(1), point (16) (h) of that Regulation;*

- (6b) ‘financial mixed activity holding company’ means an undertaking, other than a financial holding company or a mixed financial holding company, which is not the subsidiary of another undertaking, the subsidiaries of which include at least one credit institution or financial institution;**
- (7) ‘trust or company service provider’ means any person that, by way of its business, provides any of the following services to third parties:
- (a) the formation of companies or other legal persons;
  - (b) acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
  - (c) providing a registered office, business address, correspondence or administrative address, and other related services for a company, a partnership or any other legal person or arrangement;
  - (d) acting as, or arranging for another person to act as, a trustee of an express trust or performing an equivalent function for a similar legal arrangement;
  - (e) acting as, or arranging for another person to act as, a nominee shareholder for another person;

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(8) ‘gambling services’ means a service which involves wagering a stake with monetary value in games of chance, including those with an element of skill such as lotteries, casino games, poker games and betting transactions that are provided at a physical location, or by any means at a distance, by electronic means or any other technology for facilitating communication, and at the individual request of a recipient of services;

**(8a) ‘non-financial mixed activity holding company’ means an undertaking, other than a financial holding company or a mixed financial holding company, which is not the subsidiary of another undertaking, the subsidiaries of which include at least one obliged entity other than a credit institution or a financial institution**

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(13) ‘crypto-asset’ means a crypto-asset as defined in Article 3(1), point ■ (5) of Regulation *[please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final]* except when falling under the categories listed in Article 2(4) of that Regulation ■ ;

■

**(14a) ‘Self-hosted address’ means a self-hosted address as defined in Article 3(1), point (20) of Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final];**

*(14b) ‘Crowdfunding service provider’ means a crowdfunding service provider as defined in Article 2(1), point (e) of Regulation (EU) 2020/1503;*

*(14c) ‘crowdfunding intermediary’ means an undertaking other than those referred to under point (14b) the business of which is to match or facilitate the matching, through an internet-based information system open to the public or to a limited number of funders of:*

*(i) project owners, which are any natural or legal person seeking funding for projects, consisting of one or a set of predefined operations aiming at a particular objective, including fundraising for a particular cause or event irrespective of whether these projects are proposed to the public or to a limited number of funders; and*

*(ii) funders, which are any natural or legal person contributing to the funding of projects, through loans, with or without interest, or donations, including where such donations entitle the donor to a non-material benefit.*

(15) ‘electronic money’ means electronic money as defined in Article 2, point (2) of Directive 2009/110/EC *of the European Parliament and of the Council*<sup>31</sup>, but excluding monetary value as referred to in Article 1(4) and (5) of that Directive;

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<sup>31</sup> Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).



*(15a) ‘establishment’ means the actual pursuit by an obliged entity of an economic activity covered by Article 3 in a Member State or third country other than the country where its head office is established for an indefinite period and through a stable infrastructure, including:*

*(i) a branch or subsidiary, and*

*(ii) in the case of credit and financial institutions, an infrastructure qualifying as an establishment under prudential regulation.*

(16) ‘business relationship’ means a business, professional or commercial relationship connected with the professional activities of an obliged entity, which is **set up between an obliged entity and a customer, including in the absence of a written contract and which is expected to have, at the time when the contact is established, or which subsequently acquires, an element of repetition or duration;**

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(17) ‘linked transactions’ means two or more transactions with either identical or similar origin **■**, **destination and purpose, or other relevant characteristics**, over a specific period of time;

(18) ‘third country’ means any jurisdiction, independent state or autonomous territory that is not part of the European Union **■ and** that has its own AML/CFT legislation or enforcement regime;

(19) ‘correspondent relationship’ means:

- (a) the provision of banking services by one credit institution as the correspondent to another credit institution as the respondent, including providing a current or other liability account and related services, such as cash management, international *transfers of funds* ■ *as defined in Article 4, point (25) of Directive (EU) 2015/2366*, cheque clearing, payable-through accounts and foreign exchange services;
- (b) the relationships between and among credit institutions and financial institutions including where similar services are provided by a correspondent institution to a respondent institution, and including relationships established for securities transactions or *transfers of funds as defined in Article 4, point (25) of Directive (EU) 2015/2366, transactions of crypto-assets or transfers of crypto-assets*;

(20) ‘shell **■** *institution*’ means:

*(a) for credit and financial institutions other than crypto-asset service providers: a credit institution or financial institution, or an institution that carries out activities equivalent to those carried out by credit institutions and financial institutions, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group;*

*(b) for crypto-asset service providers: entities whose name appears in the register established by the European Securities and Markets Authority pursuant to Article 110 of Regulation (EU) 2023/1114 or third country entities providing crypto-asset services without being licensed or registered nor subject to AML/CFT supervision there.*

**■**

*(20a) 'crypto-asset account' means a crypto-asset account as defined in Article 3, point (19) of Regulation (EU) No 2023/1113 of the European Parliament and of the Council.*

*(20b) 'anonymity-enhancing coins' means crypto-assets that have built-in features designed to make crypto-asset transfer information anonymous, either systematically or optionally.*

***(20c) ‘Virtual IBAN’ means an identifier causing payments to be redirected to a number that does not identify a bank or payment account;***

***(21) ‘Legal Entity Identifier’ means a unique alphanumeric reference code based on the ISO 17442 standard assigned to a legal entity;***

***(22) ‘beneficial owner’ means any natural person who ultimately owns or controls a legal entity or **an** express trust or similar legal arrangement*** ■

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***(22a) ‘Express trust’ means a trust intentionally created by the settlor, inter vivos or on death, usually in a form of written document, to place assets under the control of a trustee for the benefit of a beneficiary or for a specified purpose.***

***(22b) ‘objects of a power’ means the natural or legal persons or class of natural or legal persons among whom trustees may select the beneficiaries in a discretionary trusts;***

***(22e) ‘default taker’ means the natural or legal persons or class of natural or legal persons who are the beneficiaries of a discretionary trusts should the trustees fail to exercise their discretion;***

(23) 'legal arrangement' means an express trust or an arrangement which has a similar structure or function to an express trust, including fiducie and certain types of Treuhand and fideicomiso;

**(23a) 'basic information' means:**

**(a) in relation to a legal entity:**

**(i) legal form and name of the legal entity;**

**(ii) instrument of constitution, and the statutes if they are contained in a separate instrument;**

**(iii) address of the registered or official office and, if different, the principal place of business, and the country of incorporation;**

**(iv) a list of legal representatives;**

**(v) where applicable, a list of shareholders or members, including information on the number of shares held by each shareholder and the categories of those shares and the nature of the associated voting rights;**

**(vi) where available, the registration number, the European Unique identifier, the tax identification number and the Legal Entity Identifier;**

**(vii) in the case of foundations, the assets held by the foundation to pursue its purposes;**

**(b) in relation to a legal arrangement:**

**(i) the name or unique identifier of the legal arrangement;**

**(ii) the trust deed or equivalent;**

**(iii) the purpose(s) of the legal arrangement, if any;**

**(iv) the assets held in the legal arrangement or managed through it;**

**(v) the place of residence of the trustee(s) of the express trusts or persons holding equivalent positions in the similar legal arrangement, and, if different, the place from where the express trust or similar legal arrangement is administered.**

(24) ‘formal nominee arrangement’ means a contract or **■** an equivalent **arrangement**, between **■ a nominator and a nominee**, where the nominator is a legal entity or natural person that issues instructions to a nominee to act on their behalf in a certain capacity, including as a director or shareholder **or settlor**, and the nominee is a legal entity or natural person instructed by the nominator to act on their behalf;

- (25) ‘politically exposed person’ means a natural person who is or has been entrusted with prominent public functions *including*:
- (a) in a Member State:
- (i) heads of State, heads of government, ministers and deputy or assistant ministers;
  - (ii) members of parliament or of similar legislative bodies;
  - (iii) members of the governing bodies of political parties *that hold seats in national executive or legislative bodies, or in regional or local executive or legislative bodies representing constituencies of at least 50.000 inhabitants. Where justified by their administrative organisation and risk, Member States may set a lower threshold for the designation of members of governing bodies of political parties represented at regional or local level as prominent public functions. Member States shall notify that lower threshold to the Commission*;
  - (iv) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances;

- (v) members of courts of auditors or of the boards of central banks;
- (vi) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
- (vii) members of the administrative, management or supervisory bodies of **enterprises controlled within the meaning of Article 22 of Directive 2013/34/EU of the European Parliament and of the Council by the state, as well as by regional or local authorities where those enterprises qualify as medium sized or large undertakings or groups as defined in Article 3(3), (4), (6) and (7) of that Directive. Where justified by their administrative organisation and risk, Member States may set a lower threshold for the identification of enterprises controlled by regional or local authorities. Member States shall notify that lower threshold to the Commission;**
- (viiia) heads of regional and local authorities, including groupings of municipalities and metropolitan regions, with at least 50 000 inhabitants. Where justified by their administrative organisation and risk, Member States may set a lower threshold for the designation of heads of regional and local authorities as prominent public functions. Member States shall notify that lower threshold to the Commission;**
- (viiib) other prominent public functions provided for by Member States;**



- (b) in an international organisation:
  - (i) the highest ranking official, his/her deputies and members of the board or equivalent function of an international organisation;
  - (ii) representatives to a Member State or to the Union;
- (c) at Union level:
  - (i) functions at the level of Union institutions and bodies that are equivalent to those listed in points (a)(i), (ii), (iv), (v) and (vi);
- (d) in a third country:
  - (i) functions that are equivalent to those listed in point (a);



*No public function referred to in points (a) to (d) shall be understood as covering middle-ranking or more junior officials;*

(26) 'family members' means:

- (a) the spouse, or the person in a registered partnership or civil union or in a similar arrangement;
- (b) the children and the spouses of, or persons in a registered partnership or civil union or in a similar arrangement with, those children;
- (c) the parents;
- (ca) *for the functions referred to in point (25)(a)(i) and equivalent functions at Union level or in a third country, the siblings. Where justified by their social and cultural structures and by risk, Member States may apply a broader scope for the designation of siblings as family members of politically exposed persons.***

***Member States shall notify that broader scope to the Commission.***

(27) 'persons known to be close associates' means:

- (a) natural persons who are known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a politically exposed person;

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- (b) natural persons who have sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the de facto benefit of a politically exposed person;
- (28) ‘senior management’ means, in addition to *the* █ members of the █ *management body in its management function*, an officer or employee with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to take decisions affecting its risk exposure;
- (28a) ‘management body’ means an obliged entity’s body or bodies, which are appointed in accordance with national law, which are empowered to set the obliged entity's strategy, objectives and overall direction, and which oversee and monitor management decision-making, and include the persons who effectively direct the business of the obliged entity. Where no body exists, the management body is the person who effectively direct the business of the obliged entity;*
- (28b) ‘management body in its management function’ means the management body responsible for the day-to-day management of the obliged entity;*
- (28c) ‘management body in its supervisory function’ means the management body acting in its role of overseeing and monitoring management decision-making.*

(29) ‘group’ means a group of undertakings which consists of a parent undertaking, its subsidiaries, ■ as well as undertakings linked to each other by a relationship within the meaning of Article 22 of Directive 2013/34/EU of the European Parliament and of the Council<sup>32</sup>;

***(29a) ‘parent undertaking’ means:***

- (a) for groups whose head office is in the Union, an obliged entity that is a parent undertaking as defined in Article 2(9) of Directive (EU) 2013/34 that is not itself a subsidiary of another undertaking in the Union, provided that at least one or more subsidiary undertakings are obliged entities;***
- (b) 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:***

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- (i) is an obliged entity pursuant to article 3;***

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<sup>32</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 1).

*(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 this Regulation;*

(30) ‘cash’ means currency, bearer-negotiable instruments, commodities used as highly-liquid stores of value and prepaid cards, as defined in Article 2(1), points (c) to (f) of Regulation (EU) 2018/1672 of the European Parliament and of the Council<sup>33</sup>;

(31) ‘competent authority’ means:

(a) a Financial Intelligence Unit;

(b) a supervisory authority as defined under point (33);

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<sup>33</sup> Regulation (EU) 2018/1672 of the European Parliament and of the Council of 23 October 2018 on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005 (OJ L 284, 12.11.2018, p. 6).

- (c) a public authority that has the function of investigating or prosecuting money laundering, its predicate offences or terrorist financing, or that has the function of tracing, seizing or freezing and confiscating criminal assets;
- (d) a public authority with designated responsibilities for combating money laundering or terrorist financing;
- (32) ‘supervisor’ means the body entrusted with responsibilities aimed at ensuring compliance by obliged entities with the requirements of this Regulation, including the Authority for anti-money laundering and countering the financing of terrorism (AMLA) when performing the tasks entrusted on it in Article 5(2) of Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]*;
- (33) ‘supervisory authority’ means a supervisor who is a public body, or the public authority overseeing self-regulatory bodies in their performance of supervisory functions pursuant to Article 29 of Directive *[please insert reference – proposal for 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final]*, or AMLA when *acting as a supervisor*;
- (34) ‘self-regulatory body’ means a body that represents members of a profession and has a role in regulating them, in performing certain supervisory or monitoring functions and in ensuring the enforcement of the rules relating to them;

- (35) ‘targeted financial sanctions’ means both asset freezing and prohibitions to make funds or other assets available, directly or indirectly, for the benefit of designated persons and entities pursuant to Council Decisions adopted on the basis of Article 29 of the Treaty on European Union and Council Regulations adopted on the basis of Article 215 of the Treaty on the Functioning of the European Union;
- (36) **United Nations’ financial sanctions’ means both asset freezing and prohibitions to make funds or other assets available, directly or indirectly, for the benefit of designated or listed persons and entities** pursuant to:
- (a) **United Nations Security Council resolution 1267 (1999) and its successor resolutions;**
- (b) **Security Council resolution 1373 (2001), including the determination that the relevant sanctions will be applied to the person or entity and the public communication of that determination;**
- (c) **United Nations’ financial sanctions relating to proliferation financing;**

***(36a) 'United Nations' financial sanctions relating to proliferation financing' means both asset freezing and prohibitions to make funds or other assets available, directly or indirectly, for the benefit of designated or listed persons and entities pursuant to:***

***(a) Security Council resolution 1718 (2006) and any successor resolutions;***

***(b) Security Council resolution 2231 (2015) and any successor resolutions;***

***(c) any other Security Council resolutions imposing asset freezing and prohibitions to make funds or other assets available in relation to the financing of proliferation of weapons of mass destruction.***

***(36b) 'funds or other assets' means any assets, including, but not limited to, financial assets, economic resources, including oil and other natural resources, property of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets, and any other assets which potentially may be used to obtain funds, goods or services.***



*(36c) 'professional football club' means any legal person that owns or manages a football club that has been granted a licence and participates in the national football league(s) in a Member State of the Union and whose players and staff are contractually engaged and are remunerated in exchange for their services;*

■

*(36e) 'football agent' means a natural or legal person who, for a fee, provides intermediary services and represents football players and/or professional football clubs in negotiations with a view to concluding a contract for a football player or represents professional football clubs in negotiations with a view to concluding an agreement for the transfer of a player;*

*(36f) 'precious metal and stone' means metals and stones referred to in Annex IVa;*

*(36g) 'cultural good' means a good listed in Annex I to Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods.*

■

*(36k) ‘partnership for information sharing’ means a mechanism that enables the sharing and processing of information between obliged entities and, where applicable, competent authorities referred to in letters (a), (b) and (c) of point 31 of this Article, for the purposes of preventing and combating money laundering, its predicate offences and terrorist financing whether at national level or on a cross-border basis, and regardless of the form of that partnership.*

## SECTION 2

### SCOPE

#### *Article 3*

#### **Obliged entities**

The following entities are to be considered obliged entities for the purposes of this Regulation:

- (1) credit institutions;
- (2) financial institutions;

- (3) the following natural or legal persons acting in the exercise of their professional activities:
- (a) auditors, external accountants and tax advisors, and any other natural or legal person ***including independent legal professionals such as lawyers***, that undertakes to provide, directly or by means of other persons to which that other person is related, material aid, assistance or advice on tax matters as principal business or professional activity;
  - (b) notaries, ***lawyers*** and other independent legal professionals, where they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their client concerning any of the following:
    - (i) buying and selling of real property or business entities;
    - (ii) managing of client money, securities or other assets, ***including crypto-assets***;
    - (iii) opening or management of bank, savings, ***securities or crypto-assets*** accounts;

- (iv) organisation of contributions necessary for the creation, operation or management of companies;
  - (v) creation, operation or management of trusts, companies, foundations, or similar structures;
- (c) trust or company service providers;
- (d) estate agents **■** *and other real estate professionals to the extent they act* as intermediaries in *real estate transactions, including in relation to* the letting of immovable property for transactions for which the monthly rent amounts to EUR 10 000 or more, or the equivalent in national currency, *irrespective of the means of payment*;
- 
- (e) persons trading *as a regular or principal professional activity* in precious metals and stones,
- (ea) persons trading, as a regular or principal professional activity, in high-value goods other than metals and stones, as listed in Annex IIIa;*

(f) providers of gambling services;

■

(h) crowdfunding service providers *and crowdfunding intermediaries*;

■

(i) persons trading or acting as intermediaries in the trade of *cultural goods*, including when this is carried out by art galleries and auction houses, where the value of the transaction or linked transactions amounts to at least EUR 10 000 or the equivalent in national currency;

■

(j) persons storing, trading or acting as intermediaries in the trade of ■ *cultural goods and high value goods listed in Annex IIIa* when this is carried out within free zones and customs warehouses, where the value of the transaction or linked transactions amounts to at least EUR 10 000 or the equivalent in national currency;

■

- (k) **credit intermediaries** for mortgage and consumer credits, other than credit institutions defined in Article 2(5) and financial institutions defined in Article 2(6), **with the exception of the credit intermediaries carrying out activities under the responsibility of one or more creditors or credit intermediaries;**
- (l) investment migration operators permitted to represent or offer intermediation services to third country nationals seeking to obtain residence rights in a Member State in exchange of any kind of investment, including capital transfers, purchase or renting of property, investment in government bonds, investment in corporate entities, donation or endowment of an activity to the public good and contributions to the state budget.
- (la) non-financial mixed activity holding companies.*
- (lb) football agents.*
- (lc) professional football clubs in respect of the following transactions:*
- *transactions with an investor;*
  - *transactions with a sponsor;*
  - *transactions with football agents or other intermediaries, whether natural or legal persons;*
  - *transactions for the purposes of a football player's transfer;*

*Article 4*

**Exemptions for certain providers of gambling services**

1. **█** Member States may decide to exempt, in full or in part, providers of gambling services from the requirements set out in this Regulation on the basis of the proven low risk posed by the nature and, where appropriate, the scale of operations of such services.

*The exemption referred to in the first subparagraph shall not apply to:*

*(a) casinos;*

*(b) providers of gambling services the principal activity of which is to provide online gambling services or sport betting services, other than:*

*(i) online gambling services operated by the State, whether through a public authority or an enterprise or body controlled by the State;*

*(ii) online gambling services the organisation, operation and administration of which is regulated by the State.*

2. For the purposes of paragraph 1, Member States shall carry out a risk assessment of gambling services assessing:
- (a) money laundering and terrorist financing *threats*, vulnerabilities and mitigating factors of the gambling services;
  - (b) the risks linked to the size of the transactions and payment methods used;
  - (c) the geographical area in which the gambling service is administered, ***including their cross border dimension and accessibility from other Member States or third countries.***

When carrying out such risk assessments, Member States shall take into account the findings of the risk assessment drawn up by the Commission pursuant to Article 7 of Directive [please insert reference – proposal for 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final].

3. Member States shall establish risk-based monitoring activities or take other adequate measures to ensure that the exemptions granted pursuant to this Article are not abused.



## Article 4a

### *Exemptions of certain professional football clubs*

1. *Member States may decide to exempt, in full or in part, professional football clubs that participate in the first division of the national football league and that have a total annual turnover of less than € 5 million for each of the previous two calendar years from the requirements set out in this Regulation on the basis of the proven low risk posed by the nature and the scale of operation of such professional football clubs.*

*Member States may decide to exempt, in full or in part, professional football clubs that participate in a division lower than the first division of the national football league from the requirements set out in this Regulation on the basis of proven low risk posed by the nature and the scale of operation of such professional football clubs.*

2. *For the purposes of paragraph 1, Member States shall carry out a risk assessment of the professional football clubs assessing:*
  - (a) *money laundering and terrorist financing vulnerabilities and mitigating factors of the professional football clubs;*

*(b) the risks linked to the size and cross-border nature of the transactions;*

*When carrying out such risk assessments, Member States shall take into account the findings of the risk assessments drawn up by the Commission pursuant to Article 7 of Directive [insert reference to the 6th AMLD].*

3. *Member States shall establish risk-based monitoring activities or take other adequate measures to ensure that the exemptions granted pursuant to this Article are not abused.*

#### *Article 5*

#### **Exemptions for certain financial activities**

1. With the exception of persons engaged in the activity of money remittance as defined in Article 4, point (22) of Directive (EU) 2015/2366, Member States may decide to exempt *legal or natural* persons that engage in a financial activity as listed in Annex I, points (2) to (12), (14) and (15), to Directive 2013/36/EU on an occasional or very limited basis where there is little risk of money laundering or terrorist financing from the requirements set out in this Regulation, provided that all of the following criteria are met:
- (a) the financial activity is limited in absolute terms;

- (b) the financial activity is limited on a transaction basis;
- (c) the financial activity is not the main activity of such persons;
- (d) the financial activity is ancillary and directly related to the main activity of such persons;
- (e) the main activity of such persons is not an activity referred to in Article 3, point (3)(a) to (d) or (f);
- (f) the financial activity is provided only to the customers of the main activity of such persons and is not generally offered to the public.

**I**

2. For the purposes of paragraph 1, point (a), Member States shall require that the total turnover of the financial activity does not exceed a threshold which shall be sufficiently low. That threshold shall be established at national level, depending on the type of financial activity.

3. For the purposes of paragraph 1, point (b), Member States shall apply a maximum threshold per customer and per single transaction, whether the transaction is carried out in a single operation or **through** linked *transactions*. That maximum threshold shall be established at national level, depending on the type of financial activity. It shall be sufficiently low in order to ensure that the types of transactions in question are an impractical and inefficient method for money laundering or terrorist financing, and shall not exceed EUR 1 000 or the equivalent in national currency, *irrespective of the means of payment*.
4. For the purposes of paragraph 1, point (c), Member States shall require that the turnover of the financial activity does not exceed 5 % of the total turnover of the natural or legal person concerned.
5. In assessing the risk of money laundering or terrorist financing for the purposes of this Article, Member States shall pay particular attention to any financial activity which is considered to be particularly likely, by its nature, to be used or abused for the purposes of money laundering or terrorist financing.
6. Member States shall establish risk-based monitoring activities or take other adequate measures to ensure that the exemptions granted pursuant to this Article are not abused.

Article 6

**Prior notification of exemptions**

1. Member States shall notify the Commission of any exemption that they intend to grant in accordance with Articles 4, **4a** and 5 without delay. The notification shall include a justification based on the relevant risk assessment **carried out by the Member State to sustain** the exemption.
2. The Commission shall within two months from the notification referred to in paragraph 2 take one of the following actions:
  - (a) confirm that the exemption may be granted **on the basis of the justification given by the Member State;**
  - (b) by reasoned decision, declare that the exemption may not be granted.

***For the purposes of the first subparagraph, the Commission may request additional information from that Member State.***

3. Upon reception of a decision by the Commission pursuant to paragraph 2(a), Member States may adopt the decision granting the exemption. Such decision shall state the reasons on which it is based. Member States shall review such decisions regularly, and in any case when they update their national risk assessment pursuant to Article 8 of Directive [please insert reference – proposal for 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final].
4. By [3 months from the date of application of this Regulation], Member States shall notify to the Commission the exemptions granted pursuant to Article 2(2) and (3) of Directive (EU) 2015/849 in place at the time of the date of application of this Regulation.
5. The Commission shall publish every year in the Official Journal of the European Union the list of exemptions granted pursuant to this Article ***and make the list of those decisions publicly available on its website.***

SECTION 3  
OUTSOURCING

Article 6a

*Notification of cross-border operations and application of national law*

1. *Obligated entities wishing to carry out activities within the territory of another Member State for the first time shall notify their supervisors of the activities which they intend to carry out in that other Member State. That notification shall be submitted as soon as the obliged entity takes steps to carry out those activities, and, in the case of establishments, in any event no later than three months prior to the activities of those establishments being commenced. Obligated entities shall immediately notify their supervisors upon commencement of those activities in that other Member State. The first subparagraph shall not apply to obliged entities subject to specific notification procedures for the exercise of the freedom of establishment and of the freedom to provide services under other Union acts or to cases where the obliged entity is subject to specific authorisation requirements in order to operate in the territory of that other Member State.*
2. *Any change to the information communicated under paragraph 1 shall be communicated by the obliged entities to the supervisor of the home Member State at least one month before making the change.*

3. *Where this Regulation allows Member States to adopt additional rules applicable to obliged entities, obliged entities shall comply with the national rules of the Member State in which they are established.*
4. *Where obliged entities operate establishments in several Member States, they shall ensure that those establishments apply the rules of the Member States where those establishments are located.*
5. *Where obliged entities referred to in Article 29a(1) of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final] operate in other Member States than the one where they are established through agents, distributors, or through other types of infrastructure located in those other Member States under the freedom to provide services, they shall apply the rules of the Member States in which they provide services in relation to those activities, unless Article 29a(2) of that Directive applies, in which case they shall apply the rules of the Member State where their head office is established.*
6. *Where obliged entities are required to appoint a central contact point pursuant to Article 31a of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final], they shall ensure that the central contact point is able to ensure compliance with applicable law on behalf of the obliged entity.*



**CHAPTER II**  
**INTERNAL POLICIES, █ PROCEDURES AND CONTROLS OF OBLIGED ENTITIES**

**SECTION 1**  
**INTERNAL PROCEDURES, RISK ASSESSMENT AND STAFF**

*Article 7*

**Scope of internal policies, █ procedures and controls**

1. Obligated entities shall have in place policies, █ *procedures and controls* in order to ensure compliance with this Regulation, *the Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final], any other legal provisions adopted for the implementation of these Regulations and any administrative act issued by any supervisor* and in particular to:
- (a) mitigate and manage effectively the risks of money laundering and terrorist financing identified at the level of the Union, the Member State and the obliged entity;
  - (b) in addition to the obligation to apply targeted financial sanctions, mitigate and manage the risks of non-implementation and evasion of █ targeted financial sanctions.

Those policies, █ *procedures and controls* shall be proportionate to the nature of *the business, including its risks and complexity, and the* █ size of the obliged entity *and shall cover all the activities of the entity that fall under the scope of this Regulation.*

2. The policies, **■** *procedures and controls* referred to in paragraph 1 shall include:
- (a) **■** internal policies **■** and procedures, including **■** *in particular*:
- (i) *the establishment and updating of the business-wide risk assessment;*
  - (ii) *the entity's risk management framework;*
  - (iii) *customer due diligence to implement Chapter III of this Regulation, including procedures to determine whether the customer or, the beneficial owner, or the person on whose behalf or for the benefit of whom a transaction or activity is being conducted is a politically exposed person or family member or close associate of a politically exposed person;*
  - 
  - (iv) *reporting of suspicious transactions;*
  - (v) *outsourcing and reliance on customer due diligence performed by other obliged entities;*
  - (vi) *record-retention and policies in relation to the processing of personal data pursuant to Article 55;*
  - (vii) *the monitoring and management of compliance with such policies and procedures under the conditions set out in point (b), the identification and management of deficiencies and the implementation of remedial actions;*

- (viii) the verification, proportionate to the risks associated with the tasks and functions to be performed, when recruiting and assigning staff to certain tasks and functions and when appointing its agents and distributors, that those persons are of good repute;*
- (ix) the internal communication of the obliged entity's internal policies, procedures and controls, including to its agents, distributors and service providers involved in the implementation of its AML/CFT policies;*
- (x) a policy on the training of employees and, where relevant, its agents and distributors with regard to measures in place in the obliged entity to comply with the requirements of this Regulation, Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final], any other legal provisions adopted for the implementation of these Regulations and any administrative act issued by any supervisor.*
- (b) **█** *internal controls and an independent audit function to test the internal policies and procedures referred to in point (a) and the controls in place in the obliged entity. In the absence of an independent audit function, obliged entities may have this test carried out by an external expert █.*

**█**

*The internal policies, procedures and controls set out in the first subparagraph shall be recorded in writing. Those policies shall be approved by the management body in its management function. Internal procedures, including controls, shall be approved, at least, by the compliance manager.*

3. The obliged entities shall keep the policies, **procedures and controls** up to date, and enhance them where weaknesses are identified.
4. By [2 years after the entry into force of this Regulation], AMLA shall issue guidelines on the elements that obliged entities should take into account, **based on the nature of the business, including its risks and complexity, and their size**, when deciding on the extent of their internal policies, **procedures and controls, in particular as regards the staff allocated to the compliance functions** . *Those guidelines shall also identify situations where, due to the nature and size of the obliged entity:*
- (i) *internal controls should be organised at the level of the commercial function, of the compliance function and of the audit function;*
  - (ii) *the independent audit function may be carried out by an external expert.*

**Business-wide risk assessment**

1. Obligated entities shall take appropriate measures, proportionate to *the nature of their business, including its risk and complexity*, and size, to identify and assess the risks of money laundering and terrorist financing to which they are exposed, as well as the risks of non-implementation and evasion of █ targeted financial sanctions, taking into account *at least*:
- (a) the risk variables set out in Annex I and the risk factors set out in Annexes II and III;
  - (b) the findings of the supra-national risk assessment drawn up by the Commission pursuant to Article 7 of Directive [please insert reference – proposal for 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final];
  - (c) the findings of the national risk assessments carried out by the Member States pursuant to Article 8 of *Directive* [please insert reference – proposal for *6th* Anti-Money Laundering Directive - COM/2021/423 final], *as well as of any relevant sector-specific risk assessment carried out by the Member States*;
  - █
  - (d) *relevant information published by international standard setters in the AML/CFT area or, at the level of the Union relevant publications by the Commission or by AMLA*;
  - █

(e) *information on money laundering and terrorist financing risks provided by competent authorities.*

■

(cd) *information on the customer base;*

*Prior to the launch of new products, services or business practices, including the use of new delivery channels and new or developing technologies, in conjunction with new or pre-existing products and services or before starting to provide an existing service or product to a new customer segment or in a new geographical area, obliged entities shall identify and assess, in particular, the related money laundering and terrorist financing risks and take appropriate measures to manage and mitigate those risks.*

■

2. The *business-wide* risk assessment drawn up by the obliged entity pursuant to paragraph 1 shall be documented, kept up-to-date and *regularly reviewed, including where any internal or external event significantly affect the money laundering or terrorist financing risks associated with the activities, products, transactions, delivery channels, customers or geographical zones of activities of the obliged entity. It shall be made available to supervisors upon request.*

*The business-wide risk assessment shall be drawn up by the compliance officer and approved by the management body in its management function and, where such body exists, communicated to the management body in its supervisory function.*

3. *With the exception of credit institutions, financial institutions, crowdfunding service providers and crowdfunding intermediaries, supervisors, may decide that individual documented **business-wide** risk assessments are not required where the specific risks inherent in the sector are clear and understood.*
- 3a. *By [2 years from the entry into force of this Regulation], AMLA shall issue guidelines on the minimum requirements for the content of the business-wide risk assessment drawn up by the obliged entity pursuant to paragraph 1, and additional sources of information to be taken into account when drafting the business-wide risk assessment.*

#### *Article 9*

### **Compliance functions**

1. Obligated entities shall appoint one █ member of █ *the management body in its management function who shall be responsible to ensure compliance with this Regulation, the Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final], any other legal provisions adopted █ for the implementation of █ these Regulations and any administrative act issued by any supervisor* ('compliance manager').

*The compliance manager shall ensure that the obliged entity's policies, procedures and controls are consistent with the entity's risk exposure and that they are implemented. The compliance manager shall also ensure that sufficient human and material resources are allocated to that end. The compliance manager shall be responsible for receiving information on significant or material weaknesses in such policies, procedures and controls.*

*Where the management body in its management function is a body collectively responsible for its decisions, the compliance manager shall be in charge to assist and advise it and to prepare the decisions referred to in this Article.*

2. Obligated entities shall have a compliance officer, to be appointed by the **management body in its management function and with sufficiently high hierarchical standing**, who shall be **responsible for the policies, procedures and controls** in the day-to-day operation of the obliged entity's anti-money laundering and countering the financing of terrorism (AML/CFT) **requirements, including in relation to the implementation of targeted financial sanctions, and shall be a contact point for competent authorities**. That person shall also be responsible for reporting suspicious transactions to the Financial Intelligence Unit (FIU) in accordance with Article 50(6).

In the case of obliged entities subject to checks on their senior management or beneficial owners pursuant to Article 6 of Directive [please insert reference – proposal for 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final] or under other Union acts, compliance officers shall be subject to verification that they comply with those requirements.



*Where justified by the size of the obliged entity and the low risk of its activities, an obliged entity that is part of a group may appoint as its compliance officer an individual who performs that function in another entity within that group.*

*The compliance officer may only be removed following prior notification to the management body in its management function. The obliged entity shall notify the supervisor of the removal of the compliance officer, specifying whether the decision relates to the carrying out of the tasks assigned under this Regulation. The compliance officer may, spontaneously or upon request, provide information to the supervisor concerning the removal. The supervisor may use the information obtained under this paragraph to perform its tasks under Article 9(3), second subparagraph of this Regulation and under Article 29(4) of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final].*

3. Obligated entities shall provide the compliance functions with adequate resources, including staff and technology, in proportion to the size, nature and risks of the obliged entity for **effective performance of their tasks**, and shall ensure that the **persons responsible for those functions are granted the** powers to propose any measures necessary to ensure the effectiveness of the obliged entity's internal policies, **procedures and controls**.

- 4b. *Obligated entities shall take measures to ensure that the compliance officer is protected against retaliation, discrimination and any other unfair treatment, and that their decisions are not harmed or unduly influenced by commercial interests of the obliged entity.***
- 4c. *Obligated entities shall ensure that the compliance officer and the person responsible of the audit function referred to in Article 7(2), point (b), can report directly to the management body in its management function and, where such a body exists, to the management body in its supervisory function independently, and can raise concerns and warn the management body, where specific risk developments affect or may affect the entity.***

***Obligated entities shall ensure that the persons directly or indirectly participating in implementation of this Regulation, the Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 – COM/2021/422 final], any other legal provisions adopted for the implementation of these Regulations and any administrative act issued by any supervisor, have access to all information and data necessary to perform their tasks.***

5. *The compliance manager shall regularly report on the implementation of the obliged entity's policies, procedures and controls to the management body. In particular, the compliance manager shall submit once a year, or more frequently where appropriate, to the management body a report on the implementation of the obliged entity's internal policies, procedures and controls drawn up by the compliance officer, and shall keep that body informed of the outcome of any reviews. The compliance manager shall take the necessary actions to remedy any deficiencies identified in a timely manner.*
6. Where the nature of the business of the obliged entity, including its risks and complexity, and its size justify it, the functions referred to in paragraphs 1 and 3 may be performed by the same natural person. *The compliance officer may cumulate functions referred to in paragraphs 1 and 3 with other functions.*

Where the obliged entity is a natural person or a legal person whose activities are performed by one natural person only, that person shall be responsible for performing the tasks under this Article.

### Awareness of requirements

Obligated entities shall take measures to ensure that their employees *or person in comparable position* whose function so requires, **including** their agents and distributors are aware of the requirements arising from this Regulation , *the Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final], any other legal provisions adopted for the implementation of these Regulations and any administrative act issued by any supervisor*, and of the *business wide risk assessment*, internal policies, **procedures and controls** in place in the obliged entity, including in relation to the processing of personal data for the purposes of this Regulation.

The measures referred to in the first subparagraph shall include the participation of employees *or person in comparable position, including agents and distributors*, in specific, ongoing training programmes to help them recognise operations which may be related to money laundering or terrorist financing and to instruct them as to how to proceed in such cases. Such training programmes *shall be appropriate to their functions or activities and to the risks of money laundering and terrorist financing to which the obliged entity is exposed*, and shall be duly documented.

**Integrity of employees**

1. Any employee, *or person in a comparable position, including agents and distributors, directly participating in* █ the obliged entity's compliance with this Regulation, *the* █ Regulation *[please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final] and any other legal provisions adopted for the implementation of these Regulations and any administrative act issued by any supervisor*, shall undergo an assessment *commensurate with the risks associated with the tasks performed and whose content is* approved by the compliance officer of:
  - (a) individual skills, knowledge and expertise to carry out their functions effectively;
  - (b) good repute, honesty and integrity.

*Such assessment shall be performed prior to taking up of activities by the employee or person in a comparable position, including agents and distributors, and shall be regularly repeated. The intensity of the subsequent assessments shall be determined on the basis of the tasks entrusted to the person and risks associated with the function they perform.*

2. Employees, *or persons in a comparable position, including agents and distributors*, entrusted with tasks related to the obliged entity's compliance with this Regulation shall inform the compliance officer of any close private or professional relationship established with the obliged entity's customers or prospective customers and shall be prevented from undertaking any tasks related to the obliged entity's compliance in relation to those customers.

- 2a. *Obligated entities shall have in place procedures to prevent and manage conflicts of interest that may affect the carrying out of tasks related to the obliged entity's compliance with this Regulation.*
3. **█** *This Article shall █ not apply where the obliged entity is a natural person or a legal person whose activities are performed by one natural person only.*

## Article 11a

### *Reporting of breaches and protection of reporting persons*

1. *Directive (EU) 2019/1937 shall apply to the reporting of breaches of this Regulation, Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 – COM/2021/422 final], and any other legal provisions adopted for the implementation of these Regulations and any administrative act issued by any supervisor, and the protection of persons reporting such breaches.*

2. *Obligated entities shall establish internal reporting channels that meet the requirements set out in Directive (EU) 2019/1937.*

3. *The second paragraph of this Article shall not apply where the obliged entity is a natural person or a legal person whose activities are performed by one natural person only.*

## Article 12

### Situation of specific employees

Where a natural person falling within any of the categories listed in Article 3, point (3) performs professional activities as an employee of a legal person, the requirements laid down in this **Regulation** shall apply to that legal person rather than to the natural person.

## SECTION 2

### PROVISIONS APPLYING TO GROUPS

## Article 13

### Group-wide requirements

1. A parent undertaking shall ensure that the requirements on internal procedures, risk assessment and staff referred to in Section 1 of this Chapter 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. Obligated entities within the group shall implement those group-wide policies, procedures and controls, taking into account their specificities and the risks to which they are exposed.**

*The group-wide policies, procedures and controls and the group-wide risk assessments shall include all the elements listed in Articles 7 and 8.*

*For the purposes of the first subparagraph, where a group has establishments in more than one Member State and, for groups whose head office is in the Union, in third countries, parent undertakings shall take into account the information published by the authorities of all the Member States or third countries where the group's establishments are located.*

**1a** *Compliance functions shall be established at the level of the group. Those functions shall in any case include a compliance manager at the level of the group and, where justified by the activities carried out at group level, a compliance officer. The decision on the extent of the compliance functions shall be documented.*

*The compliance manager referred to in the first sub-paragraph shall regularly report to the management body in management function of the parent undertaking on the implementation of the group-wide policies, procedures and controls. At a minimum, the compliance manager shall submit a yearly report on the implementation of the obliged entity's internal policies, controls and procedures and shall take the necessary actions to remedy any deficiencies identified in a timely manner. Where the management body in its management function is a body collectively responsible for its decisions, the compliance manager shall assist and advise it, and shall prepare the decisions necessary for the implementation of this Article.*



2. The policies, **■** *procedures and controls* pertaining to the sharing of information referred to in paragraph 1 shall 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 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.*

*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.*

3. By [2 years from the entry into force of this Regulation], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall 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)** 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.*
4. The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in paragraph 3 of this Article in accordance with Articles 38 to 41 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].

**Branches and subsidiaries in third countries**

1. Where branches or subsidiaries of obliged entities are located in third countries where the minimum AML/CFT requirements are less strict than those set out in this Regulation, the **parent undertaking** shall ensure that those branches or subsidiaries comply with the requirements laid down in this Regulation, including requirements concerning data protection, or equivalent.
2. Where the law of a third country does not permit compliance with the requirements laid down in this Regulation, **the parent undertaking** shall take additional measures to ensure that branches and subsidiaries in that third country effectively handle the risk of money laundering or terrorist financing, and shall inform the supervisors of **its** home Member State **of those additional measures**. Where the supervisors of the home Member State consider that the additional measures are not sufficient, they shall exercise additional supervisory actions, including requiring the group not to establish any business relationship, to terminate existing ones or not to undertake transactions, or to close down its operations in the third country.

3. By [2 years after the date of entry into force of this Regulation], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify the type of additional measures referred to in paragraph 2, including the minimum action to be taken by obliged entities where the law of a third country does not permit the implementation of the measures required under Article 13 and the additional supervisory actions required in such cases.
4. The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in paragraph 3 of this Article in accordance with Articles 38 to 41 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].

#### **Article 14a**

##### ***Outsourcing***

1. ***Obligated entities may outsource tasks deriving from requirements under this Regulation to service providers. Those service providers may be natural or legal persons. The obliged entity shall notify to the supervisor the outsourcing before the service provider starts the activities for the obliged entity.***

7. *When performing the tasks under this Article, the service provider is to be regarded as part of the obliged entity, including where the service providers is required to consult the beneficial ownership registers referred to in Article 10 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final] for the purposes of carrying out customer due diligence on behalf of the obliged entity.*

*The obliged entity shall remain fully liable for any action, whether an act of commission or omission, connected to the outsourced tasks that are carried out by the service provider.*

*For each outsourced task, the obliged entity shall be able to demonstrate to the supervisor that it understands the rationale behind the activities carried out by the service provider and the approach followed in their implementation, and that these activities mitigate the specific risks that the obliged entity is exposed to.*

2. *The tasks outsourced pursuant to paragraph 1 shall not be undertaken in such way as to impair materially the quality of the obliged entity's policies and procedures to comply with the requirements of this Regulation and of Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 – COM/2021/422 final], and of the controls in place to test those policies and procedures. The following tasks shall not be outsourced under any circumstances:*

- (a) the proposal and approval of the obliged entity's business-wide risk assessment pursuant to Article 8 (2);*
- (b) the approval of the obliged entity's policies, controls and procedures pursuant to Article 7;*
- (ba) decision on the risk profile to be attributed to the customer;*
- (bb) the decision to enter into a business relationship or carry out an occasional transaction with a client;*
- (bc) the reporting to FIU of suspicious activities pursuant to Article 50 or threshold-based reports pursuant to Article 54a and 59, except where such activities are outsourced to another obliged entity belonging to the same group and established in the same Member State;*
- (bd) the approval of the criteria for the detection of suspicious or unusual transactions and activities;*

*By way of derogation from the first subparagraph, where a collective investment undertaking has no legal personality, or has only a board of directors and has delegated the processing of subscriptions and the collection of funds as defined in Article 4, point (25) of Directive (EU) 2015/2366 from investors to another entity, it may outsource the task referred to under point (ba), (bb) and (bc) to one of its service providers.*

*Such outsourcing may only take place after the collective investment undertaking has notified its intention to outsource the task to the supervisor pursuant to paragraph 1, and the supervisor has approved such outsourcing taking into consideration:*

- (a) the resources, experience and knowledge of the service provider in relation to the prevention of money laundering and terrorist financing;*
- (b) the knowledge of the service provider of the type of activities or transactions carried out by the collective investment undertaking.*

3. *Before an obliged entity outsources a task pursuant to paragraph 1, it shall assure itself that the service provider is sufficiently qualified to carry out the tasks to be outsourced.*

*Where an obliged entity outsources a task pursuant to paragraph 1, it shall ensure that the service provider, as well as any subsequent sub-outsourcing service provider, applies the policies and procedures adopted by the obliged entity. The conditions for the performance of such tasks shall be laid down in a written agreement between the obliged entity and the outsourced entity. The obliged entity shall perform regular controls to ascertain the effective implementation of such measures and procedures by the outsourced entity. The frequency of such controls shall be determined on the basis of the critical nature of the tasks outsourced.*

4. *Obligated entities shall ensure that outsourcing is not undertaken in such way as to impair materially the ability of the supervisory authorities to monitor and retrace the obliged entity's compliance with all of the requirements laid down in this Regulation and of Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 – COM/2021/422 final]*
5. *By way of derogation from paragraph 1, obliged entities may not outsource tasks deriving from the requirements under this Regulation to service providers residing or established in third countries identified pursuant to Section 2 of Chapter III, unless all of the following conditions are met:*
- (a) the obliged entity outsources tasks solely to a service provider that is part of the same group;*
  - (b) the group applies AML/CFT policies and procedures, customer due diligence measures and rules on record-keeping that are fully in compliance with this Regulation, or with equivalent rules in third countries;*
  - (c) the effective implementation of the requirements referred to in point (b) is supervised at group level by the supervisory authority of the home Member State in accordance with Chapter IV of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final].*



6. *By [3 years after the entry into force of this Regulation], AMLA shall issue guidelines addressed to obliged entities on:*
- (a) the establishment of outsourcing relationships, including any subsequent outsourcing relationship, in accordance with this article, their governance and procedures for monitoring the implementation of functions by the service provider and in particular those functions that are to be regarded as critical;*
  - (b) the roles and responsibility of the obliged entity and the service provider within an outsourcing agreement;*
  - (c) supervisory approaches to outsourcing as well as supervisory expectations regarding the outsourcing of critical functions.*

**CHAPTER III  
CUSTOMER DUE DILIGENCE**

**SECTION 1  
GENERAL PROVISIONS**

**Application of customer due diligence**

1. Obligated entities shall apply customer due diligence measures in any of the following circumstances:
  - (a) when establishing a business relationship;
  - (b) when ■ carrying out an occasional transaction ■ **of a value of at least EUR 10 000**, or the equivalent in national currency, whether that transaction is carried out in a single operation or through linked transactions, or a lower threshold laid down pursuant to paragraph 5;
  - (ba) when participating in the creation of a legal entity, the setting up of a legal arrangement or, for the obliged entities referred to in Article 3(3), points (a) to (c), in the transfer of ownership of a legal entity, irrespective of the value of the transaction.**
  - (c) when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold;
  - (d) when there are doubts about the veracity or adequacy of previously obtained customer identification data.
  - (da) when there are doubts that the persons they interact with are the customers or persons authorised to act on their behalf.**

2. In addition to the circumstances referred to in paragraph 1, credit and financial institutions, **with the exception of** █ crypto-asset service providers, shall apply customer due diligence when █ initiating or executing an occasional transaction that constitutes a transfer of funds as defined in Article 3, point (9) of Regulation *[please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final]*, that amounts to value of at least EUR 1 000 , or the equivalent in national currency, whether that transaction is carried out in a single operation or through linked transactions █ .

2a *By way of derogation from paragraph 1, point (b), crypto-asset service providers shall:*

(a) *apply customer due diligence measures when carrying out an occasional transaction that amounts to value of at least EUR 1 000, or the equivalent in national currency, whether the transaction is carried out in a single operation or through linked transactions;*

(b) *apply at least customer due diligence measures referred to under Article 16(1), point (a), when carrying out an occasional transaction where the value is below EUR 1 000, or the equivalent in national currency, whether the transaction is carried out in a single operation or through linked transactions.*

**2b** *By way of derogation from paragraph 1, point (b), obliged entities shall apply at least customer due diligence measures referred to under Article 16(1), point (a), when carrying out an occasional transaction in cash amounting to a value of at least EUR 3 000, or the equivalent in national currency, whether the transaction is carried out in a single operation or through linked transactions.*

*The measure referred to in the first subparagraph shall not apply where Member States have in place, pursuant to Article 59(2) and (3), a limit for large cash payment of EUR 3 000 or less, except in the cases covered by paragraph 4, point (b) of that Article.*

3. Providers of gambling services shall apply customer due diligence upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amounting to at least EUR 2 000 or the equivalent in national currency, whether the transaction is carried out in a single operation or in linked transactions.

**3a.** *For the purposes of this chapter, obliged entities shall consider as their customers the following persons:*

*(a) In the case of obliged entities under Article 3(3) point (e), (ae) and (i) , in addition to their direct customer, the supplier of goods;*

*(b) In the case of lawyers and notaries intermediating a transaction and to the extent that they are the only lawyer or notary intermediating that transaction, both parties to the transaction;*

*(c) in the case of real estate agents, both parties to the transaction;*

*(d) in relation to payment initiation services carried out by payment initiation service providers, the merchant;*

*(e) in relation to crowdfunding service providers and crowdfunding intermediaries, the natural or legal person both seeking funding and providing funding through the crowdfunding platform.*

**3b.** *Supervisors may, directly or in collaboration with other authorities in that Member State, exempt obliged entities from conducting, in full or in part, the customer due diligence measures referred to under Article 16(1), points (a) to (c) with respect to electronic money on the basis of the proven low risk posed by the nature of the product, where all of the following risk-mitigating conditions are met:*

- a) the payment instrument is not reloadable, and the amount stored electronically does not exceed EUR 150;*
- b) the payment instrument is used exclusively to purchase goods or services provided by the issuer, or within a network of service providers;*
- c) the payment instrument is not linked to a payment account and it does not permit any stored amount to be exchanged for cash or for crypto-assets;*
- d) the issuer carries out sufficient monitoring of the transactions or business relationship to enable the detection of unusual or suspicious transactions.*

3c. *The obligation under Article 16 (1), point (a), may be fulfilled by identifying the customer and verifying his identity upon entry to the casino or other physical gambling premises, provided that providers of gambling services have systems in place that enable them to attribute transactions to specific customers.*

5. By *[2 years from the date of entry into force of this Regulation]*, AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption.

Those draft regulatory technical standards shall specify:

- (a) the obliged entities, sectors or transactions that are associated with higher money laundering and terrorist financing risk and which shall comply with thresholds lower than those set in paragraph 1 point (b);
- (b) the related occasional transaction thresholds;
- (ba) the criteria to be taken into account for identifying occasional transactions and business relationships;*
- (c) the criteria to identify linked transactions.

When developing the draft regulatory technical standards referred to in the first subparagraph, AMLA shall take due account of the following:

- (a) the inherent levels of risks of the business models of the different types of obliged entities;
  - (b) the supra-national risk assessment developed by the Commission pursuant to Article 7 of Directive *[please insert reference – proposal for 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final]*.
6. The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in paragraph 5 of this Article in accordance with Articles 38 to 41 of *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]*.

#### *Article 16*

#### **Customer due diligence measures**

1. For the purpose of conducting customer due diligence, obliged entities shall apply all of the following measures:
  - (a) identify the customer and verify the customer's identity;
  - (b) identify the beneficial owner(s) *and take reasonable measures to* verify their identity so that the obliged entity is satisfied that it knows who the beneficial owner is and that it understands the ownership and control structure of the customer;

- (c) assess and, as appropriate, obtain information on ***and understand*** the purpose and intended nature of the business relationship ***or the occasional transactions***;
- (ca) ***verify whether the customer or the beneficial owner(s) are subject to targeted financial sanctions, and, in the case of a customer or party to a legal arrangement who is a legal entity, whether natural or legal persons subject to targeted financial sanctions control the legal entity or have more than 50% of the proprietary rights of an entity or majority interest in it, whether individually or collectively;***
- (cb) ***assess and, as appropriate, obtain information on the nature of the customers' business, including, in the case of undertakings, whether they carry out activities, or of their employment or occupation;***
- (d) conduct ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of the business relationship to ensure that the transactions being conducted are consistent with the obliged entity's knowledge of the customer, the business and risk profile, including where necessary the source of funds;
- (da) ***determine whether the customer, the beneficial owner of the customer and, where relevant, the person(s) on whose behalf or for the benefit of whom a transaction or activity is being carried out is a politically exposed person or a family member or person known to be a close associate thereof.***



When applying the measures referred to in points (a) and (b) of the first subparagraph, obliged entities shall also:

*(a) where a transaction or activity is being conducted on behalf of or for the benefit of a natural person other than the customer, identify and verify the identity of those natural person(s);*

*(b) verify that any person purporting to act on behalf of the customer is so authorised and identify and verify their identity.*

2. Obligated entities shall determine the extent of the measures referred to in paragraph 1 on the basis of an individual analysis of the risks of money laundering and terrorist financing having regard to the specific characteristics of the client and of the business relationship or occasional transaction, and taking into account the *business wide* risk assessment by the obliged entity pursuant to Article 8 and the money laundering and terrorist financing variables set out in Annex I as well as the risk factors set out in Annexes II and III. █

Where obliged entities identify an increased risk of money laundering or terrorist financing they shall take enhanced due diligence measures pursuant to Section 4 of this Chapter. Where situations of lower risk are identified, obliged entities may apply simplified due diligence measures pursuant to Section 3 of this Chapter.

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3. By ... [*two* years after the date of application of this Regulation], AMLA shall issue guidelines the risk variables and risk factors to be taken into account by obliged entities when entering into business relationships or carrying out occasional transactions.

4. Obligated entities shall at all times be able to demonstrate to their supervisors that the measures taken are appropriate in view of the risks of money laundering and terrorist financing that have been identified.

#### Article 16a

##### *Reporting of discrepancies with information contained in beneficial ownership registers*

1. *Obligated entities shall report to the entity in charge of the central registers referred to in Article 10 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final] any discrepancies they find between the information available in the central registers and the information they collect pursuant to Article 18(5) and Article 16(1)(b).*

*The discrepancies referred to in the first subparagraph shall be reported without undue delay and in any case no later than 14 calendar days after detecting the discrepancy. That report shall be accompanied by the information obtained by the obliged entity indicating the discrepancy and whom the obliged entity considers the beneficial owner(s) and, where applicable, the nominee shareholders and nominee directors to be and why.*

2. *By way of derogation from paragraph 1, obliged entities may refrain from notifying the register and request additional information from the customers where the discrepancies identified:*

*(a) are limited to typographical errors, different ways of transliteration, or minor inaccuracies that do not affect the identification of the beneficial owners or their position; or*

*(b) consist of outdated data, but the beneficial owners are known to the obliged entity from another reliable source and there are no grounds for suspicion that there is an intention to conceal any information, and*

*(c) do not concern cases of higher risk to which measures under Section 4 of this Chapter apply.*

*Where the obliged entity concludes that the beneficial ownership information in the central register is incorrect, obliged entities shall invite the customers to report the correct information to the register pursuant to Articles 45, 46 and 48 without undue delay, and in any case within 14 calendar days.*

*3. Where the customer has not reported the correct information within the timeframes referred to in paragraph 2, second subparagraph, the obliged entity shall report the discrepancy to the register following the procedure set out in paragraph 1, second subparagraph.*

*4. This Article shall not apply to notaries, lawyers and other independent legal professionals, auditors, external accountants and tax advisors in relation to information they receive from, or obtain on, one of their clients, in the course of ascertaining the legal position of their client, or performing their task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings, whether such information is received or obtained before, during or after such proceedings.*

*However, the requirements of this Article shall apply when the obliged entities referred to in the first subparagraph provide legal advice in any of the situations covered by Article 17(1a), second subparagraph.*

**Inability to comply with the requirement to apply customer due diligence measures**

1. Where an obliged entity is unable to comply with the customer due diligence measures laid down in Article 16(1), it shall refrain from carrying out a transaction or establishing a business relationship, and shall terminate the business relationship and consider filing a suspicious transaction report to the FIU in relation to the customer in accordance with Article 50.

*The termination of a business relationship pursuant to the first subparagraph shall not prohibit the receipt of funds as defined in Article 4, point (25) of Directive (EU) 2015/2366 due to the obliged entity.*

*Where an obliged entity has a duty to protect its customer's assets, the termination of the business relationship shall not be understood as requiring the disposal of the assets of the customer.*

*In the case of life insurance contracts, obliged entities shall, where necessary as an alternative measure to terminating the business relationship, refrain from performing transactions for the customer, including payouts to beneficiaries, until the provisions of Article 16(1) are complied with.*

*1a.* The first *paragraph* shall not apply to notaries, lawyers and other independent legal professionals, auditors, external accountants and tax advisors, to the strict extent that those persons ascertain the legal position of their client, or perform the task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings.

*However, the exemption set out in the first subparagraph shall not apply when the obliged entities referred therein:*

*(a) take part in money laundering, its predicate offences or terrorist financing;*

*(b) provide legal advice for the purposes of money laundering, its predicate offences or terrorist financing, or*

*(c) know that the client is seeking legal advice for the purposes of money laundering, its predicate offences or terrorist financing. Knowledge or purpose may be inferred from objective factual circumstances.*

2. **█** Obligated entities shall keep record of the actions taken in order to comply with the requirement to apply customer due diligence measures, including records of the decisions taken and the relevant supporting documents *and justifications*. Documents, data or information held by the obliged entity shall be updated whenever the customer due diligence is reviewed pursuant to Article 21.

*The requirements of the first subparagraph, first sentence, shall also apply to situations where obliged entities refuse to enter in a business relationship or to terminate a business relationship or apply alternative measures pursuant to Article 17(1).*

- 2a. ***By ... [three years after the entry into force of this Regulation], AMLA shall issue joint guidelines with the European Banking Authority on the measures that may be taken by credit and financial institutions to ensure compliance with AML/CFT rules when implementing the requirements of Directive 2014/92/EU, including in relation to business relationships that are most affected by de-risking practices.***

*Article 18*

**Identification and verification of the customer's and beneficial owners's identity**

1. With the exception of cases of lower risk to which measures under Section 3 apply and irrespective of the application of additional measures in cases of higher risk under Section 4 obliged entities shall obtain at least the following information in order to identify the customer, ***any person purporting to act on behalf of the customer***, and the ***natural person(s) on whose behalf or for the benefit of whom a transaction or activity is being conducted***:
- (a) for a natural person:
- (i) ***all names and surnames***;
  - (ii) place and ***full*** date of birth;

- (iii) nationality or nationalities, or statelessness and refugee or subsidiary protection status where applicable, and the national identification number, where applicable;
- (iv) the usual place of residence or, if there is no fixed residential address with legitimate residence in the Union, the postal address at which the natural person can be reached and, where *available* the tax identification number;
- (b) for a legal entity:
- (i) legal form and name of the legal entity;
- (ii) address of the registered or official office and, if different, the principal place of business, and the country of incorporation;
- (iii) the names of the legal representatives as well as, where available, the registration number, the tax identification number and the Legal Entity Identifier ■ ;
- (iiia) the names of persons holding shares or a directorship position in nominee form, including reference to their status as nominee shareholders or directors.*

- (c) for a trustee of an express trust or a person holding an equivalent position in a similar legal arrangement:
- (i) *basic information on the legal arrangement. However, with regard to the assets held in the legal arrangement or managed through it, only the assets that are to be managed in the context of the business relationship or occasional transaction shall be identified;*
  - (ii) the address of residence of the trustee(s) or person(s) holding an equivalent position in a similar legal arrangement *and, if different, the place from where the express trust or similar legal arrangement is administered*, the powers that regulate and bind the legal arrangements, as well as, where available, the tax identification number and the Legal Entity Identifier;
- (d) for other organisations that have legal capacity under national law:
- (i) name, address of the registered office or equivalent;
  - (ii) names of the persons empowered to represent the organisation as well as, where applicable, legal form, tax identification number, register number, Legal Entity Identifier and deeds of association or equivalent.



2. For the purposes of identifying the beneficial owner of a legal entity *or of a legal arrangement*, obliged entities shall collect the information referred to in Article 44(1), point (a) **■** .

Where, after having exhausted all possible means of identification pursuant to the first subparagraph, no natural person is identified as beneficial owner, or where there *are doubts* that the person(s) identified is/are the beneficial owner(s), obliged entities shall *record that no beneficial owner was identified and* identify *all* the natural person(s) holding the position(s) of senior managing official(s) in the corporate or other legal entity and shall verify their identity. *Where the performance of such verification may tip off the customer that the obliged entity has doubts regarding the beneficial ownership of the legal person, the obliged entity shall abstain from verifying the senior managing officials' identity, and shall instead record the steps taken to ascertain the identity of the beneficial owners and senior managing officials.* Obligated entities shall keep records of the actions taken as well as of the difficulties encountered during the identification process, which led to resorting to the identification of a senior managing official.

- 2a. *Credit and financial institutions shall obtain information on the natural persons using any virtual IBAN they issue, and the associated bank or payment account.*

*The credit or financial institution servicing the bank or payment account to which a virtual IBAN, issued by another credit or financial institution, reroutes payments, shall ensure that it can obtain from the institution issuing the virtual IBAN the information identifying and verifying the identity of the natural person using that virtual IBAN without delay and in any case within no more than five working days..*

3. In the case of beneficiaries of trusts or similar legal entities or arrangements that are designated by particular characteristics or class, an obliged entity shall obtain sufficient information concerning the beneficiary so that it will be able to establish the identity of the beneficiary at the time of the payout or at the time of the exercise by the beneficiary of its vested rights.
- 3a. ***In the case of discretionary trusts, an obliged entity shall obtain sufficient information concerning the objects of a power and default takers so that it will be able to establish the identity of the beneficiary at the time of the exercise by the trustees of their power of discretion, or at the time when the default takers become the beneficiaries due to the trustees' failure to exercise their power of discretion.***
4. Obligated entities shall obtain the information, documents and data necessary for the verification of the ***identity of the*** customer and ***of any person purporting to act on their behalf*** through either of the following ***means***:
- (a) the submission of the identity document, passport or equivalent and, ***where relevant***, the acquisition of information from reliable and independent sources, whether accessed directly or provided by the customer;
  - (b) the use of electronic identification means ***which meet the requirements of Regulation (EU) 910/2014 with regard to the assurance levels 'substantial' or 'high'*** and relevant ***qualified*** trust services as set out in ***that Regulation***.

5. *Obligated entities shall verify the identity of the beneficial owner and, where relevant, the person(s) on whose behalf or for the benefit of whom a transaction or activity is being carried out in either of the following ways:*

*(a) in accordance with paragraph 4;*

*(b) by taking reasonable measures to obtain the necessary information, documents and data from the customer or other reliable sources, including public registers other than the beneficial ownership registers referred to in Article 10 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final].*

*Obligated entities shall determine the extent of the information to be consulted, having regard to the risks posed by the occasional transaction or the business relationship and the beneficial owner, including risks relating to the ownership structure.*

*In addition to the measures set out in the first subparagraph, obligated entities shall verify the information on the beneficial owner(s) by consulting the central registers referred to in Article 10 of Directive (EU) .../... [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final].*

**Timing of the verification of the customer and beneficial owner identity**

1. Verification of the identity of the customer, *the beneficial owner*, and of *any persons pursuant to Article 16(1), second subparagraph, points (a) and (b)* shall take place before the establishment of a business relationship or the carrying out of an occasional transaction. Such obligation shall not apply to situations of lower risk under Section 3 of this Chapter, provided that the lower risk justifies postponement of such verification.

*For real estate agents, the verification referred to in the first subparagraph shall be carried out as from the point in time that an offer is accepted by the seller or lessor, and in all cases before any funds or property are transferred.*

2. By way of derogation from paragraph 1, verification of the identity of the customer and of the beneficial owner may be completed during the establishment of a business relationship if necessary so as not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing. In such situations, those procedures shall be completed as soon as practicable after initial contact.

3. By way of derogation from paragraph 1, a credit institution or financial institution may open an account, including accounts that permit transactions in transferable securities, as may be required by a customer provided that there are adequate safeguards in place to ensure that transactions are not carried out by the customer or on its behalf until full compliance with the customer due diligence requirements laid down in Article 16(1), first subparagraph, points (a) and (b) is obtained.

4. Whenever entering into a new business relationship with a legal entity or the trustee of an express trust or the person holding an equivalent position in a similar legal arrangement referred to in Articles 42, **42f**, **43**, **43c** and 48 and subject to the registration of beneficial ownership information pursuant to Article 10 of Directive [please insert reference – proposal for 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final], obliged entities shall collect *valid* proof of registration or *a recently issued* excerpt of the register *confirming validity of registration*.

**Identification of the purpose and intended nature of a business relationship or occasional transaction**

Before entering into a business relationship or performing an occasional transaction, an obliged entity shall *assure itself that it understands its purpose and intended nature. To that end, the obliged entity shall obtain, where necessary, information on:*

- (a) the purpose *and economic rationale* of the *occasional* transaction or business relationship;
- (b) the estimated amount █ of the envisaged █ activities;
- (c) the source of funds;
- (d) the destination of funds.

*(da) the business activity or the occupation.*

*For the purposes of the first subparagraph, point (a), obliged entities covered by Article 54a shall collect information in order to determine whether the intended use of high value goods referred to in that Article is for commercial or non-commercial purposes.*

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**Ongoing monitoring of the business relationship and monitoring of transactions performed by customers**

1. Obligated entities shall conduct ongoing monitoring of the business relationship, including transactions undertaken by the customer throughout the course of that relationship, to control that those transactions are consistent with the obliged entity's knowledge of the customer, the customer's business activity and risk profile, and where necessary, with the information about the origin *and destination* of the funds and to detect those transactions that shall be made subject to a more thorough analysis pursuant to Article 50.

*Where business relationships cover more than one product or service, obliged entities shall ensure that the customer due diligence measures cover all those products and services.*

*Where obliged entities belonging to a group have business relationships with customers that are also the customers of other entities within that group, whether obliged entities or undertakings not subject to AML/CFT requirements, they shall take into account information relating to those other business relationships for the purposes of monitoring the business relationship with their customers.*

2. In the context of the ongoing monitoring referred to in paragraph 1, obliged entities shall ensure that the relevant documents, data or information of the customer are kept up-to-date.

The frequency of updating customer information pursuant to the first sub-paragraph shall be based on the risk posed by the business relationship ***and shall in any case not exceed: (a) for higher risk customers to which measures under Section 4 of this Chapter apply, one year; (b) for all other customers, five years.***

3. In addition to the requirements set out in paragraph 2, obliged entities shall review and, where relevant, update the customer information where:
- (a) there is a change in the relevant circumstances of a customer;
  - (b) the obliged entity has a legal obligation in the course of the relevant calendar year to contact the customer for the purpose of reviewing any relevant information relating to the beneficial owner(s) or to comply with Council Directive 2011/16/EU<sup>34</sup>;
  - (c) they become aware of a relevant fact which pertains to the customer.

***3a. In addition to the ongoing monitoring referred to under paragraph 1, obliged entities shall regularly verify whether the conditions of Article 16(1), point (ca) are met. The frequency of that verification shall be commensurate to the exposure of the obliged entity and the business relationship to risks of non-implementation and evasion of targeted financial sanctions.***

***For credit and financial institutions, the verification referred to in the first subparagraph shall also be carried out upon any new designation in relation to targeted financial sanctions.***

***The requirements of this paragraph shall not replace the obligation to apply targeted financial sanctions nor stricter requirements under other Union acts or under national law on the verification of the client base against targeted financial sanctions lists.***

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<sup>34</sup> Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).



4. By [2 years after the entry into force of this Regulation], AMLA shall issue guidelines on ongoing monitoring of a business relationship and on the monitoring of the transactions carried out in the context of such relationship.

#### **Article 21a**

##### ***Temporary measures towards customers subject to United Nations' financial sanctions***

1. ***In respect of customers that are subject to United Nations' financial sanctions or that are controlled by natural or legal persons or entities subject to United Nations' financial sanctions or in which natural or legal persons that are subject to United Nations' financial sanctions have more than 50% of the proprietary rights of an entity or majority interest in it, whether individually or collectively, obliged entities shall keep records of: (a) the funds or other assets that they manage for the customer at the time when United Nations' financial sanctions are made public; (b) the transactions attempted by the customer; (c) the transactions carried out for the customer.***
2. ***Obliged entities shall apply this Article between the time that United Nations' financial sanctions are made public and the time of application of the relevant targeted financial sanctions in the Union.***

**Regulatory technical standards on the information necessary for the performance of customer due diligence**

1. By [2 years after the entry into force of this Regulation] AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall 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), 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), 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 [please insert reference – proposal for 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final];
- (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) ;
- (d) the list of attributes which electronic identification means and relevant *qualified* trust services referred to in Article 18(4), point (b), must feature in order to fulfil the requirements of Article 16(I), points (a), (b) and (c) in case of standard, simplified and enhanced customer diligence;

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2. The requirements and measures referred to in paragraph 1, points (a) and (b), shall 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.

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3. AMLA shall review regularly the regulatory technical standards and, if necessary, prepare and submit to the Commission the draft for updating those standards in order, inter alia, to take account of innovation and technological developments.
4. The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in paragraphs 1 and 3 of this Article in accordance with Articles 38 to 41 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].

## **SECTION 2**

### **THIRD-COUNTRY POLICY AND ML/TF THREATS FROM OUTSIDE THE UNION**

#### *Article 23*

#### **Identification of third countries with significant strategic deficiencies in their national AML/CFT regimes**

1. Third countries with significant strategic deficiencies in their national AML/CFT regimes shall be identified by the Commission and designated as ‘high-risk third countries’.

2. In order to identify the countries referred to in paragraph 1, the Commission is empowered to adopt delegated acts in accordance with Article 60 to supplement this Regulation, where:
- (a) significant strategic deficiencies in the legal and institutional AML/CFT framework of the third country have been identified;
  - (b) significant strategic deficiencies in the effectiveness of the third country's AML/CFT system in addressing money laundering or terrorist financing risks have been identified;
  - (c) the significant strategic deficiencies identified under points (a) and (b) are of a persistent nature and no measures to mitigate them have been taken or are being taken.

Those delegated acts shall be adopted within *twenty days* after the Commission has ascertained that the criteria in point (a), (b) or (c) are met ■

3. For the purposes of paragraph 2, the Commission shall take into account calls for the application of enhanced due diligence measures and additional mitigating measures ('countermeasures') by international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing, as well as relevant evaluations, assessments, reports or public statements drawn up by them.

4. Where a third country is identified in accordance with the criteria referred to in paragraph 2, obliged entities shall apply enhanced due diligence measures listed in Article 28(4), points (a) to (g) with respect to the business relationships or occasional transactions involving natural or legal persons from that third country.
5. The delegated act referred to in paragraph 2 shall identify among the countermeasures listed in Article 29 the specific countermeasures mitigating country-specific risks stemming from high-risk third countries.

**5b. *Where a Member State identifies a specific risk posed by a third country that the Commission has identified in accordance with the criteria referred to in paragraph 2 which is not addressed by the countermeasures referred to in paragraph 5, it may require obliged entities established in its territory to apply specific additional countermeasures to mitigate the specific risks stemming from that third country. The risk identified and the corresponding countermeasures shall be notified to the Commission within 5 days of the countermeasures being applied.***

6. The Commission shall review the delegated acts referred to in paragraph 2 on a regular basis to ensure that the specific countermeasures identified pursuant to paragraph 5 take account of the changes in the AML/CFT framework of the third country and are proportionate and adequate to the risks.

*Upon receiving a notification pursuant to paragraph 5a, the Commission shall assess the information received to determine whether those specific risks affect the integrity of the Union's internal market. Where appropriate, the Commission shall review the delegated acts referred to in paragraph 2, by adding the necessary countermeasures to mitigate those additional risks. Where the Commission considers that the specific additional measures imposed by a Member State under paragraph 5 are not necessary to mitigate specific risks stemming from that third-country, it shall be empowered to decide by way of implementing act that the Member State shall put an end to the specific additional counter-measure.*

#### *Article 24*

### **Identification of third countries with compliance weaknesses in their national AML/CFT regimes**

1. Third countries with compliance weaknesses in their national AML/CFT regimes shall be identified by the Commission.

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2. In order to identify the countries referred to in paragraph 1, the Commission is empowered to adopt delegated acts in accordance with Article 60 to supplement this Regulation, where:
- (a) compliance weaknesses in the legal and institutional AML/CFT framework of the third country have been identified;
  - (b) compliance weaknesses in the effectiveness of the third country's AML/CFT system in addressing money laundering or terrorist financing risks *or in its system to assess and mitigate risks of non-implementation or evasion of United Nations' financial sanctions relating to proliferation financing* have been identified.

Those delegated acts shall be adopted within *twenty days* after the Commission has ascertained that the criteria in point (a) or (b) are met.

3. The Commission, when drawing up the delegated acts referred to in paragraph 2 shall take into account, *as a baseline for its assessment*, information on jurisdictions under increased monitoring by international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing, as well as relevant evaluations, assessments, reports or public statements drawn up by them.
4. The delegated act referred to in paragraph 2 shall identify the specific enhanced due diligence measures among those listed in Article 28(4), points (a) to (g), that obliged entities shall apply to mitigate risks related to business relationships or occasional transactions involving natural or legal persons from that third country.



5. The Commission shall review the delegated acts referred to in paragraph 2 on a regular basis to ensure that the specific enhanced due diligence measures identified pursuant to paragraph 4 take account of the changes in the AML/CFT framework of the third country and are proportionate and adequate to the risks.

*Article 25*

**Identification of third countries posing a *specific and serious* threat to the Union's financial system**

1. The Commission is empowered to adopt delegated acts in accordance with Article 60 identifying third countries *where in exceptional cases it considers it indispensable to mitigate a* specific and serious threat to the financial system of the Union and the proper functioning of the internal market *posed by* those *third countries, and which cannot be mitigated pursuant to* Articles 23 and 24.
2. The Commission, when drawing up the delegated acts referred to in paragraph 1, shall take into account in particular the following criteria:
- (a) the legal and institutional AML/CFT framework of the third country, in particular:
    - (i) the criminalisation of money laundering and terrorist financing;
    - (ii) measures relating to customer due diligence;
    - (iii) requirements relating to record-keeping;
    - (iv) requirements to report suspicious transactions;

- (v) the availability of accurate and timely information of the beneficial ownership of legal persons and arrangements to competent authorities;

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- (b) the powers and procedures of the third country's competent authorities for the purposes of combating money laundering and terrorist financing including appropriately effective, proportionate and dissuasive sanctions, as well as the third country's practice in cooperation and exchange of information with Member States' competent authorities;
- (c) the effectiveness of the third country's AML/CFT system in addressing money laundering or terrorist financing risks;

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- 3. For the purposes of determining the level of threat referred to in paragraph 1, the Commission may request AMLA to adopt an opinion aimed at assessing the specific impact on the integrity of the Union's financial system due to the level of threat posed by a third country.

**3a. *Where AMLA identifies that a third country other than those identified pursuant to Articles 23 and 24 poses a specific and serious threat to the Union's financial system, it may address an opinion to the Commission setting out the threat it has identified and why it believes that the Commission should identify the third country pursuant to paragraph 2.***

***Where the Commission decides not to identify the third country, it shall provide a justification to AMLA.***

4. The Commission, when drawing up the delegated acts referred to in paragraph 1, shall take into account in particular relevant evaluations, assessments or reports drawn up by international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing.
5. Where the identified specific and serious threat from the concerned third country amounts to a significant strategic deficiency, Article 23(4) shall apply and the delegated act referred to in paragraph 1 shall identify specific countermeasures as referred to in Article 23(5).
6. Where the identified specific and serious threat from the concerned third country amounts to a compliance weakness, the delegated act referred to in paragraph 2 shall identify specific enhanced due diligence measures as referred to in Article 24(4).
7. The Commission shall review the delegated acts referred to in paragraph 2 on a regular basis to ensure that the measures referred to in paragraphs 5 and 6 take account of the changes in the AML/CFT framework of the third country and are proportionate and adequate to the risks.
- 7a. ***The Commission is empowered to adopt, by means of an implementing act, the methodology for the identification of third countries pursuant to this Article. That implementing act shall set out, in particular: (a) how the criteria referred to under paragraph 2 are assessed; (b) the process for interaction with the third country under assessment; (c) the process for involvement of Member States and AMLA in the identification of third countries posing a serious and specific threat to the Union's financial system. The implementing act referred to in the first subparagraph shall be adopted in accordance with the examination procedure referred to in Article 61(2) of this Regulation.***

**Guidelines on ML/TF risks, trends and methods**

1. By *[3 years from the date of entry into force of this Regulation]*, AMLA shall adopt guidelines defining the money laundering and terrorist financing trends, risks and methods involving any geographical area outside the Union to which obliged entities are exposed. AMLA shall take into account, in particular, the risk factors listed in Annex III. Where situations of higher risk are identified, the guidelines shall include enhanced due diligence measures that obliged entities shall consider applying to mitigate such risks.
2. AMLA shall review the guidelines referred to in paragraph 1 at least every two years.
3. In issuing and reviewing the guidelines referred to in paragraph 1, AMLA shall take into account evaluations, assessments or reports of *Union institutions, bodies and agencies*, international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing ■

**SECTION 3**  
**SIMPLIFIED CUSTOMER DUE DILIGENCE**

*Article 27*

**Simplified customer due diligence measures**

1. Where, taking into account the risk factors set out in Annexes II and III, the business relationship or transaction present a low degree of risk, obliged entities may apply the following simplified customer due diligence measures:
  - (a) verify the identity of the customer and the beneficial owner after the establishment of the business relationship, provided that the specific lower risk identified justified such postponement, but in any case no later than **60** days of the relationship being established;
  - (b) reduce the frequency of customer identification updates;
  - (c) reduce the amount of information collected to identify the purpose and intended nature of the business relationship *or occasional transaction* or inferring it from the type of transactions or business relationship established ;
  - (d) reduce the frequency or degree of scrutiny of transactions carried out by the customer;

- (e) apply any other relevant simplified due diligence measure identified by AMLA pursuant to Article 22.

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The measures referred to in the first subparagraph shall be proportionate to the nature and size of the business and to the specific elements of lower risk identified. However, obliged entities shall carry out sufficient monitoring of the transactions and business relationship to enable the detection of unusual or suspicious transactions.

2. Obligated entities shall ensure that the internal procedures established pursuant to Article 7 contain the specific measures of simplified verification that shall be taken in relation to the different types of customers that present a lower risk. Obligated entities shall document decisions to take into account additional factors of lower risk.
3. For the purpose of applying simplified due diligence measures referred to in paragraph 1, point (a), obliged entities shall adopt risk management procedures with respect to the conditions under which they can provide services or perform transactions for a customer prior to the verification taking place, including by limiting the amount, number or types of transactions that can be performed or by monitoring transactions to ensure that they are in line with the expected norms for the business relationship at hand.

4. Obligated entities shall verify on a regular basis that the conditions for the application of simplified due diligence continue to exist. The frequency of such verifications shall be commensurate to the nature and size of the business and the risks posed by the specific relationship.
5. Obligated entities shall refrain from applying simplified due diligence measures in any of the following situations:
- (a) the obliged entities have doubts as to the veracity of the information provided by the customer or the beneficial owner at the stage of identification, or they detect inconsistencies regarding that information;
  - (b) the factors indicating a lower risk are no longer present;
  - (c) the monitoring of the customer's transactions and the information collected in the context of the business relationship exclude a lower risk scenario;
  - (d) there is a suspicion of money laundering or terrorist financing.
- (da) there is a suspicion that the customer, or the person acting on behalf of the customer, is attempting to circumvent or evade targeted financial sanctions.***

**SECTION 4**  
**ENHANCED CUSTOMER DUE DILIGENCE**

*Article 28*

**Scope of application of enhanced customer due diligence measures**

1. In the cases referred to in Articles 23, 24, 25 and 30 to 36, as well as in other cases of higher risk that are identified by obliged entities pursuant to Article 16(2), second subparagraph ('cases of higher risk'), obliged entities shall apply enhanced customer due diligence measures to manage and mitigate those risks appropriately.
2. Obligated entities shall examine the origin and destination of funds involved in, and the purpose of, all transactions that fulfil at least one of the following conditions:
  - (a) the transactions are of a complex nature;
  - (b) the transactions are unusually large;
  - (c) the transactions are conducted in an unusual pattern;
  - (d) the transactions do not have an apparent economic or lawful purpose.



3. With the exception of the cases covered by Section 2 of this Chapter, when assessing the risks of money laundering and terrorist financing posed by a business relationship or occasional transaction, obliged entities shall take into account at least the factors of potential higher risk set out in Annex III and the guidelines adopted by AMLA pursuant to Article 26, *as well as any other indicators of higher risk such as notifications issued by the FIU and findings of the business-wide risk assessment under Article 7.*
4. With the exception of the cases covered by Section 2 of this Chapter, in cases of higher risk, obliged entities *shall* apply enhanced customer due diligence measures, proportionate to the higher risks identified.

*For the purposes of the first subparagraph, enhanced due diligence measures may include:*

- (a) obtain additional information on the customer and the beneficial owner(s);
- (b) obtain additional information on the intended nature of the business relationship;
- (c) obtain additional information on the source of funds, and source of wealth of the customer and of the beneficial owner(s);
- (d) obtain information on the reasons for the intended or performed transactions and their consistency with the business relationship;
- (e) obtain the approval of senior management for establishing or continuing the business relationship;

- (f) conduct enhanced monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination;
- (g) require the first payment to be carried out through an account in the customer's name with a credit institution subject to customer due diligence standards that are not less robust than those laid down in this Regulation.

**4a. *In addition to paragraph 4, where a business relationship that is identified as having a higher risk involves the handling of assets of EUR 5 000 000 or more through bespoke services for a customer holding a total minimum of EUR 50 000 000, whether in financial or investable wealth or real estate, or a combination thereof, excluding that customer's private residence, credit and financial institutions and trust and company service providers shall apply the following enhanced customer due diligence measures:***

- a) specific measures and procedures to mitigate risks associated with bespoke services and products offered to that customer;***
- b) obtain additional information on that customer's source of funds;***
- c) enhanced measures to prevent and manage conflicts of interest between the customer and senior managers or employees of that obliged entity that undertake tasks related to that obliged entity's compliance in relation to that customer.***

*By [3 years after the date of entry into force of this Regulation], AMLA shall issue guidelines on the measures to be taken by credit and financial institutions and trust and company service providers to establish whether a customer holds wealth of EUR 50 000 000 or more in financial, investable or real estate wealth and how to determine that wealth.*

5. With the exception of the cases covered by Section 2 of this Chapter, where Member States identify *cases of higher risks* pursuant to Article 8 of Directive *[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]*, including as a result of sectoral risk assessments carried out by the Member States, they may require obliged entities to apply enhanced due diligence measures and, where appropriate, specify those measures. Member States shall notify to the Commission and AMLA the enhanced due diligence requirements imposed upon obliged entities established in their territory within one month of their adoption, accompanied by a justification of the money laundering and terrorist financing risks underpinning such decision. ■

Where the risks identified by the Member States pursuant to the first subparagraph are likely to *stem from outside the Union and may* affect the financial system of the Union, AMLA shall, upon a request from the Commission or *on* its own initiative, consider updating the guidelines adopted pursuant to Article 26.

- 5a. *The Commission is empowered to adopt delegated acts in accordance with Article 60 to supplement this Regulation where it identifies additional cases of higher risk that affect the Union as a whole and enhanced due diligence measures that obliged entities are to apply in those cases, taking into account the notifications by Member States pursuant to paragraph 5, first subparagraph.*
6. Enhanced customer due diligence measures shall not be invoked automatically with respect to branches or subsidiaries of obliged entities established in the Union which are located *in* third countries referred to in Articles 23, 24 and 25 where those branches or subsidiaries fully comply with the group-wide policies, controls and procedures in accordance with Article 14.

#### *Article 29*

#### **Countermeasures to mitigate ML/TF threats from outside the Union**

For the purposes of Articles 23 and 25, the Commission may choose from among the following countermeasures:

- (a) countermeasures that obliged entities are to apply to persons and legal entities involving high-risk third countries and, where relevant, other countries posing a threat to the Union's financial system consisting in:

- (i) the application of additional elements of enhanced due diligence;
  - (ii) the introduction of enhanced relevant reporting mechanisms or systematic reporting of financial transactions;
  - (iii) the limitation of business relationships or transactions with natural persons or legal entities from those third countries;
- (b) countermeasures that Member States are to apply with regard to high-risk third countries and, where relevant, other countries posing a threat to the Union's financial system consisting in:
- (i) refusing the establishment of subsidiaries or branches or representative offices of obliged entities from the country concerned, or otherwise taking into account the fact that the relevant obliged entity is from a third country that does not have adequate AML/CFT regimes;
  - (ii) prohibiting obliged entities from establishing branches or representative offices of obliged entities in the third country concerned, or otherwise taking into account the fact that the relevant branch or representative office would be in a third country that does not have adequate AML/CFT regimes;

- (iii) requiring increased supervisory examination or increased external audit requirements for branches and subsidiaries of obliged entities located in the third country concerned;
- (iv) requiring increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in the third country concerned;
- (v) requiring credit and financial institutions to review and amend, or if necessary terminate, correspondent relationships with respondent institutions in the third country concerned.

*Article 30*

**Specific enhanced due diligence measures for cross-border correspondent relationships**

With respect to cross-border correspondent relationships, including relationships established for securities transactions or fund transfers, involving the execution of payments with a third-country respondent institution, in addition to the customer due diligence measures laid down in Article 16, credit institutions and financial institutions shall be required, when entering into a business relationship, to:

- (a) gather sufficient information about the respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision;

- (b) assess the respondent institution's AML/CFT controls;
- (c) obtain approval from senior management before establishing new correspondent relationships;
- (d) document the respective responsibilities of each institution;
- (e) with respect to payable-through accounts, be satisfied that the respondent institution has verified the identity of, and performed ongoing due diligence on, the customers having direct access to accounts of the correspondent institution, and that it is able to provide relevant customer due diligence data to the correspondent institution, upon request.

Where credit institutions and financial institutions decide to terminate cross-border correspondent relationships for reasons relating to anti-money laundering and counter-terrorist financing policy, they shall document their decision.

#### **Article 30a**

##### ***Specific enhanced due diligence measures for cross-border correspondent relationships for crypto-asset service providers***

- 1. By way of derogation from Article 30, with respect to cross-border correspondent relationships involving the execution of crypto-asset services as defined in Article 3 (1) point 16 of Regulation [please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final] with a respondent entity not established in the EU and providing similar services, including transfers of crypto-assets, crypto-asset service providers shall, in addition to the customer due diligence measures laid down in article 16, when entering into a business relationship:***

- (a) determine if the respondent entity is licensed or registered;*
- (b) gather sufficient information about the respondent entity to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the entity and the quality of supervision;*
- (c) assess the respondent entity AML/CFT controls;*
- (d) obtain approval from senior management before the establishment of the correspondent relationship;*
- (e) document the respective responsibilities of each party to the correspondent relationship;*
- (f) with respect to payable-through crypto-asset accounts, be satisfied that the respondent entity has verified the identity of, and performed ongoing due diligence on, the customers having direct access to accounts of the correspondent entity, and that it is able to provide relevant customer due diligence data to the correspondent entity, upon request.*

*Where crypto-asset service providers decide to terminate correspondent relationships for reasons relating to anti-money laundering and counter-terrorist financing policy, they shall document and record their decision.*

*Crypto-asset service providers shall update the due diligence information for the correspondent relationship on a regular basis or when new risks emerge in relation to the respondent entity.*



2. *Crypto-asset service providers shall take into account the information collected pursuant to the first paragraph in order to determine, on a risk sensitive basis, the appropriate measures to be taken to mitigate the risks associated with the respondent entity.*
3. *AMLA shall issue guidelines to specify the criteria and elements that crypto-asset services providers shall take into account for conducting the assessment referred to in paragraph 1 and the risk mitigating measures referred to in paragraph 2 , including the minimum action to be taken by crypto-asset service providers upon identification that the respondent entity is not registered or licensed.*

## Article 30b

### *Specific measures towards individual third country respondent institutions*

1. *By way of derogation from Article 30, with respect to cross-border correspondent relationships involving the execution of crypto-asset services as defined in Article 3 (1) point 16 of Regulation [please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final] with the exception of providing advice on crypto-assets as referred to in Article 3(1), point (16) (h) of that Regulation, with a respondent entity not established in the EU and providing similar services, including transfers of crypto-assets, crypto-asset service providers shall, in addition to the customer due diligence measures laid down in Article 16, when entering into a business relationship.*

2. *AMLA shall issue a recommendation addressed to credit and financial institutions where there are concerns that respondent institutions in third countries fall in any of the following situations:*

- (a) they are in serious, repeated or systematic breach of AML/CFT requirements;*
- (b) they have weaknesses in their internal policies, procedures and controls that are likely to result in serious, repeated or systematic breaches of AML/CFT requirements;*
- (c) they have in place internal policies, procedures and controls that are not commensurate to the risks of money laundering, its predicate offences and terrorist financing to which the third country respondent institution is exposed.*

*The recommendation referred to in the first subparagraph shall be issued where all of the following conditions are met:*

- (a) on the basis of the information available in the context of its supervisory activities, a financial supervisor, including AMLA when performing its supervisory activities, deems that a third country respondent institution falls in any of the situations listed under the first subparagraph and may affect the risk exposure of the correspondent relationship;*
- (b) following an assessment of the information available to the financial supervisor referred to in point (a), there is an agreement among financial supervisors in the Union that the third country respondent institution falls in any of the situations listed under the first subparagraph and may affect the risk exposure of the correspondent relationship.*

3. *Prior to issuing the recommendation referred to in paragraph 2, AMLA shall consult the third country supervisor in charge of the respondent institution and request that it provides its own as well as the respondent institution's views on the adequacy of the policies, procedures and controls as well as of the customer due diligence measures the respondent institution has in place to mitigate risks of money laundering, its predicate offences and terrorist financing and remedial measures to be put in place. Where no reply is provided within two months or where the reply provided does not indicate that the third country respondent institution can implement satisfactory AML/CFT policies, procedures and controls as well as adequate customer due diligence measures to mitigate the risks to which it is exposed that may affect the correspondent relationship, AMLA shall proceed with the recommendation.*
4. *AMLA shall withdraw its recommendation as soon as it considers that a third country respondent institution on which it has adopted a recommendation as referred to in the paragraph 2 no longer fulfils the conditions listed under that paragraph, first subparagraph.*
5. *In relation to third country respondent institutions that fulfil any of the conditions of paragraph 1, credit and financial institutions shall:*

*(a) abstain from entering into new business relationships with the third country respondent institution unless they conclude, on the basis of the information collected under Article 30 or 30a, that the mitigating measures applied to the business relationship with the third country respondent institution and the measures in place in the third country respondent institution can adequately mitigate the money laundering and terrorist financing risks associated with that business relationship;*

*(b) for ongoing business relationships with the third country respondent institution:*

*(i) review and update the information on the respondent institution pursuant to Articles 30 or 30b;*

*(ii) terminate the business relationship unless they conclude, on the basis of the information collected under point (i), that the mitigating measures applied to the business relationship with the third country respondent institution and the measures in place in the third country respondent institution can adequately mitigate the money laundering and terrorist financing risks associated with that business relationship;*

*(c) inform the respondent institution of the conclusions they have drawn in relation to the risks posed by the correspondent relationship following the recommendation by AMLA and the measures taken pursuant to points (a) or (b) of this paragraph.*

*Where AMLA has withdrawn a recommendation pursuant to paragraph 3, credit and financial institutions shall review their assessment as to whether the third country respondent institutions fulfil any of the conditions laid down in paragraph 1.6. Credit institutions and financial institutions shall document any decision taken pursuant to this Article.*

#### *Article 31*

##### **Prohibition of correspondent relationships with shell institutions**

Credit institutions and financial institutions shall not enter into, or continue, a correspondent relationship with a shell *institution*. Credit institutions and financial institutions shall take appropriate measures to ensure that they do not engage in or continue correspondent relationships with a credit institution or financial institution that is known to allow its accounts to be used by a shell *institution*.

*In addition to the first subparagraph, crypto-asset service providers shall ensure that their accounts are not used by shell institutions to provide crypto-asset services. To that end, crypto-asset service providers shall have in place policies and procedures to detect any attempt to use their accounts for the provision of unregulated crypto-asset services.*

## Article 31b

*Measures to mitigate risks in relation to transactions with a self-hosted address*

1. *Crypto-asset service providers shall identify and assess the risk of money laundering and financing of terrorism associated with transfers of crypto-assets directed to or originating from a self-hosted address. To that end, crypto-asset service providers shall have in place internal policies, procedures and controls.*

*Crypto-asset service providers shall apply mitigating measures commensurate with the risks identified. Those mitigating measures shall include one or more of the following:*

- (a) *taking risk-based measures to identify, and verify the identity of, the originator or beneficiary of a transfer made from or to a self-hosted address or beneficial owner of such originator or beneficiary, including through reliance on third parties;*
- (b) *requiring additional information on the origin and destination of the crypto-assets;*
- (c) *conducting enhanced ongoing monitoring of those transactions;*
- (d) *any other measure to mitigate and manage the risks of money laundering and financing of terrorism as well as the risk of non-implementation and evasion of targeted financial sanctions.*

2. *AMLA shall issue guidelines to specify the measures referred to in this Article, including*
- a) the criteria and means for identification and verification of the identity of the originator or beneficiary of a transfer made from or to a self-hosted address, including through reliance on third parties, taking into account the latest technological developments;*
  - b) criteria and means for the verification of whether or not the self-hosted is owned or controlled by a customer.*

### Article 31c

#### *Specific provisions regarding applicants for residence by investment schemes*

*In addition to the customer due diligence measures laid down in Article 16, with respect to customers who are third-country nationals who are in the process of applying for residence rights in a Member State in exchange for any kind of investment, including transfers, purchase or renting of property, investment in government bonds, investment in corporate entities, donation or endowment of an activity contributing to the public good and contributions to the state budget, obliged entities shall, as a minimum, carry out enhanced customer due diligence measures as set out in Article 28(4), points (a), (c), (e) and (f).*

**Specific provisions regarding politically exposed persons**

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1. ***In addition to the customer due diligence measures laid down in Article 16***, obliged entities shall apply the following measures ***with respect to occasional transactions or business relationships with politically exposed persons***:
  - (a) obtain senior management approval for ***carrying out occasional transactions or for*** establishing or continuing business relationships with politically exposed persons;
  - (b) take adequate measures to establish the source of wealth and source of funds that are involved in business relationships or ***occasional*** transactions with politically exposed persons;
  - (c) conduct enhanced, ongoing monitoring of those business relationships.
  
3. By [3 years from the date of entry into force of this Regulation], AMLA shall issue guidelines on the following matters:
  - (a) the criteria for the identification of persons falling under the definition of persons known to be a close associate;
  - (b) the level of risk associated with a particular category of politically exposed person, their family members or persons known to be close associates, including guidance on how such risks are to be assessed after the person no longer holds a prominent public function for the purposes of Article 35.



**List of prominent public functions**

1. Each Member State shall issue and keep up to date a list indicating the exact functions which, in accordance with national laws, regulations and administrative provisions, qualify as prominent public functions for the purposes of Article 2, point (25). Member States shall request each international organisation accredited on their territories to issue and keep up to date a list of prominent public functions at that international organisation for the purposes of Article 2, point (25). These lists shall also include any function which may be entrusted to representatives of third countries and of international bodies accredited at Member State level. Member States shall notify those lists, as well as any change made to them, to the Commission and to AMLA.

*1a. The Commission is empowered to adopt, by means of an implementing act, the format for the establishment and communication of the national lists of prominent public functions pursuant to paragraph 1, first sentence. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 61(2) of this Regulation.*

*1b. The Commission is empowered to adopt delegated acts in accordance with Article 60 to supplement Article 2(25) where the lists notified by the Member States pursuant to paragraph 1 identify common additional categories of prominent public functions and that those categories of prominent public functions are of relevance for the Union as a whole. When drawing up delegated acts pursuant to the first subparagraph, the Commission shall consult AMLA.*

2. The Commission shall draw up and keep up to date the list of the exact functions which qualify as prominent public functions at the level of the Union. That list shall also include any function which may be entrusted to representatives of third countries and of international bodies accredited at Union level.
3. The Commission shall assemble, based on the lists provided for in paragraphs 1 and 2 of this Article, a single list of all prominent public functions for the purposes of Article 2, point (25). The Commission shall publish that single list shall in the *Official Journal of the European Union*. AMLA shall make the list public on its website.

#### *Article 34*

#### **Politically exposed persons who are beneficiaries of insurance policies**

Obligated entities shall take reasonable measures to determine whether the beneficiaries of a life or other investment-related insurance policy or, where relevant, the beneficial owner of the beneficiary are politically exposed persons. Those measures shall be taken no later than at the time of the payout or at the time of the assignment, in whole or in part, of the policy. Where there are higher risks identified, in addition to applying the customer due diligence measures laid down in Article 16, obliged entities shall:

- (a) inform senior management before payout of policy proceeds;
- (b) conduct enhanced scrutiny of the entire business relationship with the policyholder.

**Measures towards persons who cease to be politically exposed persons**

1. Where a politically exposed person is no longer entrusted with a prominent public function by the Union, a Member State, third country or an international organisation, obliged entities shall take into account the continuing risk posed by that person, ***as a result of their former function***, in their assessment of money laundering and terrorist financing risks in accordance with Article 16.
2. Obligated entities shall apply one or more of the measures referred to in Article 28(4) to mitigate the risks posed by the ***politically exposed person*** until such time as ***the risks referred to under paragraph 1 no longer exist***, but in any case for not less than 12 months following the time when the individual is no longer entrusted with a prominent public function.
3. The obligation referred to in paragraph 2 shall apply accordingly where an obliged entity ***carries out an occasional transaction or*** enters into a business relationship with a person who in the past was entrusted with a prominent public function by the Union, a Member State, third country or an international organisation.

*Article 36*

**Family members and close associates of politically exposed persons**

The measures referred to in Articles 32, 34 and 35 shall also apply to family members or persons known to be close associates of politically exposed persons.

**SECTION 5**

**SPECIFIC CUSTOMER DUE DILIGENCE PROVISIONS**

*Article 37*

**Specifications for the life and other investment-related insurance sector**

For life or other investment-related insurance business, in addition to the customer due diligence measures required for the customer and the beneficial owner, obliged entities shall conduct the following customer due diligence measures on the beneficiaries of life insurance and other investment-related insurance policies, as soon as the beneficiaries are identified or designated:

- (a) in the case of beneficiaries that are identified as specifically named persons or legal arrangements, taking the name of the person or arrangement;
- (b) in the case of beneficiaries that are designated by characteristics or by class or by other means, obtaining sufficient information concerning those beneficiaries so that it will be able to establish the identity of the beneficiary at the time of the payout.

For the purposes of the first subparagraph, points (a) and (b), the verification of the identity of the beneficiaries and, where relevant, their beneficial owners shall take place at the time of the payout. In the case of assignment, in whole or in part, of the life or other investment-related insurance to a third party, obliged entities aware of the assignment shall identify the beneficial owner at the time of the assignment to the natural or legal person or legal arrangement receiving for its own benefit the value of the policy assigned.

█

## SECTION 6

### *RELIANCE ON CUSTOMER DUE DILIGENCE PERFORMED BY OTHER OBLIGED ENTITIES*

#### *Article 38*

##### **General provisions relating to reliance on other obliged entities**

1. Obligated entities may rely on other obliged entities, whether situated in a Member State or in a third country, to meet the customer due diligence requirements laid down in Article 16(1), points (a), (b) and (c), provided that:
  - (a) the other obliged entities apply customer due diligence requirements and record-keeping requirements laid down in this Regulation, or equivalent when the other obliged entities are established or reside in a third country;
  - (b) compliance with AML/CFT requirements by the other obliged entities is supervised in a manner consistent with Chapter IV of Directive [please insert reference – proposal for 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final].

The ultimate responsibility for meeting the customer due diligence requirements shall remain with the obliged entity which relies on another obliged entity.

2. When deciding to rely on other obliged entities situated in third countries, obliged entities shall take into consideration the geographical risk factors listed in Annexes II and III and any relevant information or guidance provided by the Commission, or by AMLA or other competent authorities.

3. In the case of obliged entities that are part of a group, compliance with the requirements of this Article and with Article 39 may be ensured through group-wide policies, controls and procedures provided that all the following conditions are met:
- (a) the obliged entity relies on information provided solely by an obliged entity that is part of the same group;
  - (b) the group applies AML/CFT policies and procedures, customer due diligence measures and rules on record-keeping that are fully in compliance with this Regulation, or with equivalent rules in third countries;
  - (c) the effective implementation of the requirements referred to in point (b) is supervised at group level by the supervisory authority of the home Member State in accordance with Chapter IV of Directive [please insert reference – proposal for 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final] or of the third country in accordance with the rules of that third country.
4. Obligated entities shall not rely on obliged entities established in third countries identified pursuant to Section 2 of this Chapter. However, obliged entities established in the Union whose branches and subsidiaries are established in those third countries may rely on those branches and subsidiaries, where all the conditions set out in paragraph 3, points (a) to (c), are met.

**Process of reliance on another obliged entity**

1. Obligated entities shall obtain from the obliged entity relied upon all the necessary information concerning the customer due diligence requirements laid down in Article 16(1), first subparagraph points (a), (b) and (c), or the business being introduced.
2. Obligated entities which rely on other obliged entities shall take all necessary steps to ensure that the obliged entity relied upon provides, upon request:
  - (a) copies of the information collected to identify the customer;
  - (b) all supporting documents or trustworthy sources of information that were used to verify the identity of the client, and, where relevant, of the customer's beneficial owners or persons on whose behalf the customer acts, including data obtained through electronic identification means and relevant trust services as set out in Regulation (EU) No 910/2014; and
  - (c) any information collected on the purpose and intended nature of the business relationship.



3. The information referred to in paragraphs 1 and 2 shall be provided by the obliged entity relied upon without delay and in any case within five working days.
4. The conditions for the transmission of the information and documents mentioned in paragraphs 1 and 2 shall be specified in a written agreement between the obliged entities.
5. Where the obliged entity relies on an obliged entity that is part of its group, the written agreement may be replaced by an internal procedure established at group level, provided that the conditions of Article 38(2) are met.

█

*Article 41*

**Guidelines on *reliance on other obliged entities***

By [3 years after the entry into force of this Regulation], AMLA shall issue guidelines addressed to obliged entities on:

- (a) the conditions which are acceptable for obliged entities to rely on information collected by another obliged entity, including in case of remote customer due diligence;
- 
- (c) the roles and responsibility of *the obliged entities involved* in a situation of *a reliance of* reliance on another obliged entity ■ ;
- (d) supervisory approaches to reliance on other obliged entities ■ .

**CHAPTER IV**  
**BENEFICIAL OWNERSHIP TRANSPARENCY**

*Article 42*

**Identification of Beneficial Owners for corporate and other legal entities**

1. In *the* case of corporate *and other legal* entities, the beneficial owner(s) **█** shall be the natural person(s) who:
- (a) have, directly or indirectly, an ownership interest in the corporate entity; (b) controls, directly or indirectly, the corporate entity, through ownership interest or via other means;*

*Control via other means over the corporate entity shall be identified independently of and in parallel to the existence of an ownership interest or control through ownership interest.*

**█**

## Article 42a

### *Beneficial Ownership through ownership interest*

1. *For the purpose of Article 42(1), point (a), ‘an ownership interest in the corporate entity’ shall mean direct or indirect ownership of 25% or more of the shares or voting rights or other ownership interest in the corporate entity, including rights to a share of profits, other internal resources or liquidation balance. The indirect ownership shall be calculated by multiplying the shares or voting rights or other ownership interests held by the intermediate entities in the chain of entities in which the beneficial owner holds shares or voting rights and by adding together the results from those various chains, unless Article 42c applies.*

*For the purposes of assessing whether an ownership interest exists in the corporate entity, all shareholdings on every level of ownership shall be taken into account.*

2. *Where Member States identify pursuant to Article 8(4), point (c) of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final] categories of legal entities that are exposed to higher money laundering and terrorist financing risks, including based on the sectors in which they operate, they shall inform the Commission thereof. By [two years after the date of application of this Regulation], the Commission shall assess whether the risks associated with those categories of legal entities are relevant for the internal market and, where it concludes that a lower threshold is appropriate to mitigate those risks, identify by means of a delegated act: (a) the categories of corporate entities that are associated with higher money laundering and terrorist financing risk and for which a lower threshold shall apply; (b) the related thresholds.*

*The lower threshold referred to in the first subparagraph shall be set at a maximum of 15% of ownership interest in the legal entity, unless the Commission concludes, on the basis of risk, that a higher threshold would be more proportionate, which shall in any case be set at less than 25%.*

3. *The Commission shall review the delegated act referred to in paragraph 2 on a regular basis to ensure that it identifies the relevant categories of corporate entities that are associated with higher risks, and that the related thresholds are commensurate to those risks.*
4. *In case of legal entities other than corporate entities, for which, having regard to their form and structure, it is not appropriate or possible to calculate ownership, the beneficial owner(s) shall be the natural person(s) who controls via other means, directly or indirectly, the legal entity, pursuant to Article 42b(3) and (4), except where Article 42f applies.*

## Article 42b

### *Beneficial Ownership through control*

1. *Control over a legal entity shall be exercised through ownership interest or via other means.*
2. *For the purpose of this Chapter, the following definitions shall apply:*
  - (a) *'control of the legal entity' shall mean the possibility to exercise, directly or indirectly, significant influence and impose relevant decisions within the legal entity;*
  - (b) *'indirect control of a legal entity' shall mean control of intermediate legal entities in the ownership structure or in various chains of the ownership structure, where the direct control is identified on each level of the structure;*
  - (c) *'control through ownership interest of the corporate entity' shall mean direct or indirect ownership of 50% plus one of the shares or voting rights or other ownership interest in the corporate entity;*
3. *Control via other means of the legal entity shall in any case include the possibility to exercise:*
  - (a) *in case of a corporate entity, the majority of the voting rights in the corporate entity, whether or not shared by persons acting in concert;*

- (b) the right to appoint or remove a majority of the members of the board or the administrative, management or supervisory body or similar officers of the legal entity;*
- (c) relevant veto rights or decision rights attached to the share of the corporate entity and any decisions regarding distribution of profit of the legal entity or leading to a shift in assets in the legal entity.*

*4. In addition to paragraph 3, control of the legal entity may be exercised via other means. Depending on the particular situation of the legal entity and its structure, other means of control may include:*

- (a) formal or informal agreements with owners, members or the corporate entities, provisions in the articles of association, partnership agreements, syndication agreements, or equivalent documents or agreements depending on the specific characteristics of the legal corporate entity, as well as voting arrangements;*
- (b) relationships between family members;*
- (c) use of formal or informal nominee arrangements.*

## Article 42c

### *Coexistence of ownership interest and control in the ownership structure*

1. *Where corporate entities are owned through a multi-layered ownership structure, and in one or more chains of that structure the ownership interest and the control coexist in relation to different layers of the chain, the beneficial owner(s) shall be:*
  - (i) *the natural person(s) who controls, directly or indirectly, through ownership interest or via other means, legal entities that have a direct ownership interest in the corporate entity, whether individually or cumulatively.*
  - (ii) *the natural person(s) who, whether individually or cumulatively, directly or indirectly, has an ownership interest in the corporate entity that controls, through ownership interest or via other means, the legal entity, directly or indirectly.*

## Article 42d

### *Ownership structures involving legal arrangements or similar legal entities*

1. *Where legal entities referred to in Article 42f or legal arrangements have, directly or indirectly, an ownership of 25% or more of the shares or voting rights or other ownership interest in the corporate entity, whether individually or cumulatively, or control, directly or indirectly, the corporate entity, through ownership interest or via other means, the beneficial owner(s) shall be the natural person(s) who are the beneficial owners of the legal entities referred to in Article 42f or of the legal arrangements.*



## Article 42e

### *Notifications*

- 1. Member States shall notify to the Commission by [3 months from the date of application of this Regulation] a list of the types of corporate and other legal entities existing under their national laws with beneficial owner(s) identified in accordance with Article 42 and Article 42a, paragraph 4. The Commission shall communicate that notification to the other Member States. The notification by the Member States shall include the specific categories of entities, description of characteristics, names and, where applicable, legal basis under the national laws of the Member States. It shall also include an indication of whether, due to the specific form and structures of legal entities other than corporate entities, the mechanism under Article 45(3) applies, accompanied by a detailed justification of the reasons for that.*

## Article 42f

### *Identification of beneficial owners for legal entities similar to express trust*

1. *In the case of legal entities other than those referred to in Article 42, similar to express trust, such as foundations, the beneficial owners shall be all the following natural persons:*
  - (a) *the founder(s);*
  - (b) *the members of the management body in management function of the legal entity;*
  - (c) *the members of the management body in supervisory function of the legal entity;*
  - (d) *the beneficiaries, unless Article 43a applies;*
  - (e) *any other natural person, who controls directly or indirectly the legal entity.*
  
3. *Member States shall notify to the Commission by [3 months from the date of application of this Regulation] a list of legal entities, where the beneficial owner(s) is identified in accordance with paragraph 1.*

*The notification referred to in the first subparagraph shall be accompanied by a description of:*

- (a) their form and basic features;*
- (b) the process through which they can be set up;*
- (c) the process for accessing basic and beneficial ownership information on those legal entities ;*
- (d) the websites at which the registers referred to under Article 10 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final] where information on beneficial owners of those legal entities can be consulted and the contact detail of the Authorities in charge of those registers.*

**3. In cases where legal entities referred to in paragraph 1 belong to multi-layered control structures, where any of the positions listed under paragraph 1, points (a) to (e), is held by a legal entity, beneficial owner of the legal entity referred to in paragraph 1 shall be:**

- (a) the natural persons listed in paragraph 1, points (a) to (e); and*
- (b) the beneficial owner of the legal entities that occupy any of the positions listed in paragraph 1, points (a) to (e).*

- 3a. *The Commission is empowered to adopt, by means of an implementing act, a list of legal entities governed under the laws of Member States which should be subject to the requirements of this Article. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 61(2) of this Regulation.*

*Article 43*

**Identification of beneficial owners for express trusts and similar legal arrangements**

1. In case of express trusts, the beneficial owners shall be all the following natural persons:
  - (a) the settlor(s);
  - (b) the trustee(s);
  - (c) the protector(s), if any;
  - (d) the beneficiaries, *unless Article 43a or 43b apply*;
  - (e) any other natural person exercising ultimate control over the express trust by means of direct or indirect ownership or by other means, including through a chain of control or ownership.

**1a. In cases where legal arrangements belong to multi-layered control structures, where any of the positions listed under paragraph 1, points (a) to (e), is held by a legal entity, beneficial owner legal arrangements shall be:**

**(a) the natural persons listed in paragraph 1, points (a) to (e); and**

**(b) the beneficial owner of the legal entities that occupy any of the positions listed in paragraph 1, points (a) to (e).**

2. In the case of **other** legal arrangements similar to express trusts, the beneficial owners shall be the natural persons holding equivalent or similar positions to those referred to under paragraph 1. ■

Member States shall notify to the Commission by [3 months from the date of application of this Regulation] a list of legal arrangements ■ similar to express trusts, where the beneficial owner(s) is identified in accordance with paragraph 1.

**The notification referred to in the second subparagraph shall be accompanied by a description of:**

**(a) their form and basic features;**

**(b) the process through which they can be set up;**

**(c) the process for accessing basic and beneficial ownership information on those legal arrangements;**

*(d) the websites at which the registers referred to under Article 10 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final] where information on beneficial owners of those legal arrangements can be consulted and the contact detail of the Authorities in charge of those registers.*

3. The Commission is empowered to adopt, by means of an implementing act, a list of legal arrangements ■ governed under the laws of Member States which should be subject to the same beneficial ownership transparency requirements as express trusts, *accompanied by the information referred to in the previous paragraph, third subparagraph*. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 61(2) of this Regulation.

■

#### Article 43a

##### *Identification of a class of beneficiaries*

1. *In case of legal entities under Article 42f or, with the exception of discretionary trusts, express trusts and similar legal arrangements under Article 43, where beneficiaries have yet to be determined, the class of beneficiaries and its general characteristics shall be identified. Beneficiaries within the class shall be beneficial owner(s) as soon as they are identified or designated.*
2. *In the following cases, only the class of beneficiaries and its characteristics shall be identified:*

- (a) *pension schemes within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council*<sup>35</sup>;
- (b) *employee financial ownership or participation schemes, following an appropriate risk assessment, Member States have concluded a low risk of misuse for money laundering or terrorist financing;*
- (c) *legal entities under Article 42f, express trusts and similar legal arrangements under Article 43, provided that:*
- (i) *the legal entity, the express trusts or similar legal arrangement is set up for a non-profit or charitable purpose; and*
  - (ii) *following an appropriate risk assessment, Member States have concluded that the legal entity, express trust or similar legal arrangement is at a low risk of misuse for money laundering or terrorist financing.*
3. *Member State shall notify to the Commission the categories of legal entities, express trusts or similar legal arrangements under paragraph 2, together with a justification based on the specific risk assessment. The Commission shall communicate that decision to the other Member States.*

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<sup>35</sup> *Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).*

## Article 43b

### *Identification of objects of a power and default takers in discretionary trusts*

*In the case of discretionary trusts, where beneficiaries have yet to be selected, the objects of a power and default takers shall be identified. Beneficiaries among the objects of a power shall be beneficial owner(s) as soon as they are selected. Default takers shall be beneficial owners when the trustees fail to exercise their discretion.*

## Article 43c

### *Identification of beneficial owners of undertakings for collective investment and alternative investment funds*

*By way of derogation from Article 42, paragraph 1 and Article 43, paragraph 1, the beneficial owner(s) of undertakings for collective investment and alternative investment funds shall be the natural person(s) who fulfil one or more of the following conditions: (a) they hold directly or indirectly 25% or more of the units held in the undertaking for collective investment or in the alternative investment fund; (b) they have the ability to define or influence the investment policy of the undertaking for collective investment or of the alternative investment fund; (c) they control the activities of the undertaking for collective investment or alternative investment fund through other means.*



**Beneficial ownership information**

1. *Legal entities and trustees of express trusts or persons holding equivalent positions in similar legal arrangements shall ensure that the beneficial ownership information is adequate, accurate, and up-to-date.*

*The requirements of the first subparagraph shall apply to: (a) beneficial ownership information held by legal entities and trustees of express trusts or persons holding equivalent positions in similar legal arrangements; (b) beneficial ownership information that they provide to obliged entities in the context of customer due diligence procedures in accordance with Chapter III; or (c) beneficial ownership information that they submit to beneficial ownership registers referred to under Article 10 of Directive [please insert reference to AMLD]*

*The beneficial ownership information referred to in the first subparagraph shall include the following:*

- (a) *all names and surnames, place and full date of birth, residential address, country of residence and nationality or nationalities of the beneficial owner, [ ] number of identity document, such as passport or national identity document, and, where it exists, unique personal identification number [ ] assigned to the person by his or her country of usual residence, and general description of the source of such number;*

- (b) the nature and extent of the beneficial interest held in the legal entity or legal arrangement, whether through ownership interest or control via other means, as well as the date *as of which* the beneficial interest *is* held;
- (c) information on the legal entity of which the natural person is the beneficial owner in accordance with Article 18(1), point (b) *or, in the case of legal arrangements of which the natural person is the beneficial owner, basic information on the legal arrangement;*
- (d) *where the ownership and control structure contains more than one legal entity or legal arrangement, a description of such structure, including names and, where it exists, identification numbers of the individual legal entities or legal arrangements that are part of that structure, and a description of the relationships between them, including the share of the interest held;*
- (da) *where a class of beneficiaries is identified under Article 43a, general description of the characteristic of the class of beneficiaries;*
- (db) *where objects of a power and default takers are identified under Article 43b: (i) for natural persons, their name(s) and surname(s); (ii) for legal entities and legal arrangements, their names; (iii) for a class, its description.*

2. *Legal entities and trustees of express trusts or persons holding an equivalent position in a similar legal arrangement shall obtain adequate, accurate, and up-to-date beneficial ownership information within 28 calendar days from their creation.* It shall be updated promptly, and in any case no later than 28 calendar days following any change of the beneficial owner(s), and on an annual basis.

### Obligations of legal entities

1. All corporate and other legal entities incorporated in the Union shall obtain and hold adequate, accurate and **up-to-date** beneficial ownership information.

Legal entities shall provide, in addition to information about their legal owner(s), information on the beneficial owner(s) to obliged entities where the obliged entities are taking customer due diligence measures in accordance with Chapter III.

- 1a. ***Beneficial ownership information shall be obtained and reported to the register referred to in Article 10 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final] by the legal entity without undue delay after its incorporation. Any change of the information shall be reported to the register without undue delay and no later than 28 calendar days following the change. The legal entity shall regularly verify that it holds updated information over its beneficial ownership. As a minimum, such verification shall be performed annually whether as a self-standing process or as part of other periodical processes, such as the submission of financial statement.***

The beneficial owner(s) of corporate or other legal entities shall provide those entities with all the information necessary for the corporate or other legal entity ***to comply with the requirements of this Chapter or to respond to any request for additional information received pursuant to Article 10(2) of Directive [Reference to AMLD]. The same cooperation shall be provided by those legal persons and, in the case of legal arrangements, their trustees or person holding an equivalent position, who are part of the ownership or control structure.***

2. Where, after having exhausted all possible means of identification pursuant to Articles 42 *to 42f*, no person is identified as beneficial owner, or where there is ***substantial and justified uncertainty on the part of the legal entity*** that the person(s) identified is the beneficial owner(s), **█** legal entities shall keep records of the actions taken in order to identify their beneficial owner(s).
3. In the cases referred to in paragraph 2, when providing beneficial ownership information in accordance with Article 16 of this Regulation and Article 10 of Directive *[please insert reference – proposal for 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final]*, corporate or other legal entities shall provide the following:
- (a) a statement **█** that there is no beneficial owner or that the beneficial owner(s) could not be ***determined, accompanied by a justification as to why it was not possible to determine the beneficial owner in accordance with Article 42 and what constitutes uncertainty about the ascertained information;***
  - (b) the details on ***all*** natural person(s) who hold the position of senior managing official(s) in the corporate or legal entity equivalent to the information required under Article 44(1), point (a).

***For the purpose of this Article, ‘senior management officials’ shall mean the natural persons who are the executive members of the management body, as well as the natural persons who exercise executive functions within a corporate entity and are responsible, and accountable to the management body, for the day-to-day management of the entity.***

4. Legal entities shall make the information collected pursuant to this Article available, upon request and without delay, to competent authorities.
5. The information referred to in paragraph 4 shall be maintained for five years after the date on which the companies are dissolved or otherwise ceases to exist, whether by persons designated by the entity to retain the documents, or by administrators or liquidators or other persons involved in the dissolution of the entity. The identity and contact details of the person responsible for retaining the information shall be reported to the registers referred to in Article 10 of Directive *[please insert reference – proposal for 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final]*.

#### **Article 45a**

##### ***Exceptions to obligations of legal entities***

***The provisions of Article 45 shall not apply to:***

- (a) ***companies whose securities are admitted to trading on a regulated market, provided that:***
  - (i) ***control over the company is exercised exclusively by the natural person with the voting rights; and***
  - (ii) ***no other legal persons or legal arrangements are part of the company's ownership or control structure;***

- (iii) *for foreign legal entities under Article 48, equivalent requirements to those referred to in (i) and (ii) under international standards exist;*
- (b) *bodies governed by public law as defined under Article 2(1), point (4) of Directive 2014/24/EU of the European Parliament and of the Council<sup>36</sup>*

#### *Article 46*

#### **Trustees obligations**

1. *In case of any legal arrangement administered in a Member State or whose trustee or the person holding an equivalent position in a similar legal arrangement is established or resides in a Member State, trustees and persons holding an equivalent position in a similar legal arrangement shall obtain and hold the following information regarding the legal arrangement:*

*(a) basic information on the legal arrangement;*

*(b) adequate, accurate and current beneficial ownership information as provided under Article 44;*

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<sup>36</sup> *Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance (OJ L 98, 28.3.2014, p. 65).*

*(c) where legal entities or legal arrangements are parties to the trust, basic and beneficial ownership information on those legal entities and legal arrangements;*

*(d) information on any agent authorised to act on behalf of the legal arrangement or to take any action in relation to it, and on the obliged entities with which the trustee or person holding an equivalent position in a similar legal arrangement enter into a business relationship on behalf of the legal arrangement.*

*The information referred to in the first subparagraph shall be maintained for five years after the involvement of the trustee or the person holding an equivalent position with the express trust or similar legal arrangement ceases to exist.*

*1a. Beneficial ownership information and basic information on the legal arrangement shall be obtained and reported to the register referred to in Article 10 of Directive [please insert reference – proposal for 6<sup>th</sup> Anti-Money Laundering Directive – COM/2021/423 final] by the trustee or the person holding an equivalent position in a similar legal arrangement without undue delay after the creation of the express trust or similar legal arrangements. Without undue delay after any change of the information, and in any case no later than 28 calendar days following the change of the beneficial ownership or of the basic information on the legal arrangement, the trustee or the person holding an equivalent position in a similar legal arrangement shall ensure that the updated information is reported to the register.*

*The trustee or the person holding an equivalent position in a similar legal arrangement shall regularly verify that the information they hold over the legal arrangement pursuant to paragraph 1, first subparagraph is updated. Such verification shall be performed at least annually, whether as a self-standing process or as part of other periodical processes.*

2. The persons referred to in paragraph 1 shall disclose their status and provide the information on the beneficial owner(s) **and on the assets of the legal arrangements that are to be managed in the context of a business relationship or occasional transaction** to obliged entities when the obliged entities are taking customer due diligence measures in accordance with Chapter III.
3. The beneficial owner(s) of a legal arrangement other than the trustee or person holding an equivalent position, **its agents and the obliged entities servicing the legal arrangement** shall provide the trustee or person holding an equivalent position in a similar legal arrangement with all the information **and documentation** necessary **for the trustee or person holding an equivalent position** to comply with the requirements of this Chapter. **The same cooperation shall be provided by those persons and, in the case of legal arrangements, their trustees, who are the links that mediate the indirect position of beneficial owner(s) of the legal arrangement.**
4. Trustees of an express trust and persons holding an equivalent position in a similar legal arrangement shall make the information collected pursuant to this Article available, upon request and without delay, to competent authorities.



- 4a.** *In the case of legal arrangements whose parties are legal entities, where, after having exhausted all possible means of identification pursuant to Articles 42 to 42f, no person is identified as beneficial owner of those legal entities, or where there is substantial and justified uncertainty that the person(s) identified is the beneficial owner(s), trustees of express trusts or persons in an equivalent position in similar legal arrangements shall keep records of the actions taken in order to identify their beneficial owner(s).*
- 4b.** *In the cases referred to in paragraph 4a, when providing beneficial ownership information in accordance with Article 16 of this Regulation and Article 10 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final], trustees of express trusts or persons in an equivalent position in similar legal arrangements shall provide the following:*
- (a) a statement that there is no beneficial owner or that the beneficial owner(s) could not be determined, accompanied by a justification as to why it was not possible to determine the beneficial owner in accordance with Article 42 to 42f and what constitutes uncertainty about the ascertained information;*
- (b) the details of all natural person(s) who hold the position of senior managing official(s) in the corporate or legal entity that is party to the legal arrangement equivalent to the information required under Article 44(1), point (a).*

*Article 46a*

*Exceptions to obligations of legal entities and legal arrangements*

*The provisions of Articles 45 and 46 shall not apply to:*

*(a) companies whose securities are admitted to trading on a regulated market, provided that:*

- (i) control over the company is exercised exclusively by the natural person with the voting rights; and*
- (ii) no other legal persons or legal arrangements are part of the company's ownership or control structure;*
- (iii) for foreign legal entities under Article 48, equivalent requirements to those referred to in (i) and (ii) under international standards exist;*

*(b) bodies governed by public law as defined under Article 2(1), point (4) of Directive 2014/24/EU of the European Parliament and of the Council<sup>37</sup>.*

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<sup>37</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance (OJ L 98, 28.3.2014, p. 65).

*Article 47*

**Nominees obligations**

Nominee shareholders and nominee directors of a corporate or other legal entities shall maintain adequate, accurate and current information on the identity of their nominator and the nominator's beneficial owner(s) and disclose them, as well as their status, to the corporate or other legal entities. Corporate or other legal entities shall report this information to the registers set up pursuant to Article 10 of Directive *[please insert reference – proposal for 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final]*.

Corporate and other legal entities shall also report this information to obliged entities when the obliged entities are taking customer due diligence measures in accordance with Chapter III.

**Foreign legal entities and arrangements**

1. **Legal entities incorporated outside the Union *and trustees* of express trusts or *persons holding an equivalent position in a similar legal arrangement that are* administered outside the Union *or that reside or are established outside the Union* shall *submit beneficial ownership information pursuant to Article 44 to* the central register referred to in Article 10 of Directive [please insert reference – proposal for 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final] set up by the Member State where *they* :**
- (a) enter into a business relationship with an obliged entity ***if the conditions of paragraph 1a are fulfilled;***
  - (b) acquire, ***whether directly or through intermediaries, real estate***
    - ba. acquire, whether directly or through intermediaries, any of the following goods from an obliged entity referred to in Article 3, point 3(j) in the context of an occasional transaction: (i) motor vehicles for non-commercial purposes for a price of at least EUR 250 000 or the equivalent in national currency; (ii) watercrafts for non-commercial purposes for a price of at least EUR 7.5 million or the equivalent in national currency; aircrafts for non-commercial purpose for a price of at least EUR 7.5 million or the equivalent in national currency;***

*(bb) are awarded a public procurement contract for goods, services or concessions by a contracting authority in the Union;*

*1a. Where legal entities incorporated outside the Union enter into a business relationship with an obliged entity, they shall only submit their beneficial ownership information to the central register in any of the following cases: (a) they enter into a business relationship with an obliged entity that is associated with medium-high or high money laundering or terrorist financing risks pursuant to the supranational risk assessment or national risk assessment of the Member State concerned referred to in Articles 7 and 8 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]; (b) the supranational risk assessment or the national risk assessment of the Member State concerned identifies that the category of legal entity or the sector in which the legal entity incorporated outside the Union operates is associated, where relevant, with medium-high or high risks money laundering or terrorist financing risks.*

*Trustees of express trusts or persons holding an equivalent position in a similar legal arrangement shall submit their beneficial ownership information regardless of whether the conditions laid down in the first subparagraph are fulfilled.*

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- 1b.** *The information referred to in paragraph 1 shall be accompanied by a statement setting out in relation to which of those activities the information is submitted, as well as any relevant document, and shall be submitted:*
- (a) for the cases referred to in point (a) of paragraph 1 prior to start of the business relationship;*
  - (b) for the cases referred to in points (b) and (ba) of paragraph 1 before completion of the purchase;*
  - (c) for the cases referred to in point (c) of paragraph 1 before signature of the contract.*
- 1c.** *For the purposes of paragraph 1, points (a), obliged entities shall inform the legal entities where the conditions of paragraph 1 and 1a are met and require a certificate of proof of registration or an excerpt of the beneficial ownership information held in the register to proceed with the business relationship or occasional transaction.*

**1d. In the cases covered by paragraph 1, legal entities incorporated outside the Union and trustees of express trusts or persons holding an equivalent position in a similar legal arrangement that are administered outside the Union or that reside or are established outside the Union shall report any change to the beneficial ownership information submitted to the central register pursuant to paragraph 1 without undue delay, and in any case no later than 28 calendar days following the change of the beneficial owner.**

**The requirement of the first subparagraph shall apply:**

**(a) for the cases referred to in points (a) of the paragraph 1, for the entire duration of the business relationship with the obliged entity;**

**(b) for the cases referred to in point (b) of paragraph 1, as long as the legal person or legal arrangement owns the real estate;**

**(c) for the cases referred to in point (ba) of paragraph 1, for the period between the initial submission of the information to the register and the completion of the purchase;**

**(d) for the cases referred to in point (c) of paragraph 1, for the entire duration of the contract.**

2. Where the legal entity, the trustee of the express trust or the person holding an equivalent position in a similar legal arrangement *meets the conditions of the first paragraph* in different Member States, a certificate of proof of registration of the beneficial ownership information in a central register held by one Member State shall be considered as sufficient proof of registration.

2a. *Where, on [please insert date of application of this Regulation], legal entities incorporated outside the Union or legal arrangements administered outside the Union or whose trustee or person holding an equivalent position in a similar legal arrangement is established or resides outside the Union meet the conditions set out in paragraph 1, point (b), the beneficial ownership information of those legal entities and legal arrangements shall be recorded in accordance with paragraph 1b by [6 months after the date of application of this Regulation].*

*However, the first subparagraph shall not apply to legal entities or legal arrangements that have acquired real estate in the Union prior to 1st January 2014. Member States may decide, on the basis of risk, that an earlier date applies and notify the Commission thereof. The Commission shall communicate the decisions to the other Member States.*

2b. *Member States may, on the basis of risk, extend the obligation set out in paragraph 1, point (a) to business relationships with foreign legal entities that are ongoing on [date of entry into application of this Regulation] and notify the Commission thereof. The Commission shall communicate the decisions to the other Member States.*



### Sanctions

- I.** Member States shall lay down the rules on sanctions applicable to *breaches* of the provisions of this Chapter and shall take all measures necessary to ensure that they are implemented. The sanctions provided for must be effective, proportionate and dissuasive.

Member States shall notify those rules on sanctions by [6 months after the entry into force of this Regulation] to the Commission together with their legal basis and shall notify it without delay of any subsequent amendment affecting them.

- 1a.** *By [two years after the date of entry into force of this Regulation], the Commission shall adopt delegated acts to supplement this Regulation by defining:*

*(a) the categories of breaches that are subject to sanctions and the persons liable for such breaches; (b) indicators to classify the level of gravity of those breaches; (c) the criteria to be taken into account when setting the level of sanctions.*

*The Commission shall regularly review the delegated act referred to in the previous paragraph to ensure that it identifies the relevant categories of breaches and that the related sanctions are effective, dissuasive and proportionate.*

**CHAPTER V**  
**REPORTING OBLIGATIONS**

*Article 50*

**Reporting of suspicions**

1. **█** Obligated entities, and, where applicable, their directors and employees, shall cooperate fully by promptly:
  - (a) reporting to the FIU, on their own initiative, where the obliged entity knows, suspects or has reasonable grounds to suspect that funds *or activities*, regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist financing *or criminal activity* and by responding to requests by the FIU for additional information in such cases;
  - (b) providing the FIU directly, at its request, with all necessary information, ***including information on transaction records, within the time frames imposed;***

***All suspicious transactions, including attempted transactions and suspicions arising from the inability to conduct customer due diligence shall be reported.***

For the purposes of points (a) and (b) ***of the first subparagraph***, obliged entities shall reply to a request for information by the FIU within ***five working*** days. In justified and urgent cases, FIUs shall be able to shorten such a ***timeframe including to less than*** 24 hours.

*By way of derogation from the previous subparagraph, the FIU may extend the time frame for a response beyond the five working days where it considers it justified and provided that the extension does not undermine the FIU's analysis.*

2. For the purposes of paragraph 1, obliged entities shall assess transactions *or activities carried out by their customers on the basis of and against any relevant fact and information known to them or which they are in possession of. Where necessary obliged entities shall prioritise their assessment taking into consideration the urgency of the transaction or activity and the risks affecting the Member State in which they are established.*

A suspicion *pursuant to paragraph 1* is based on the characteristics of the customer *and their counterparts*, the size and nature of the transaction or activity *or the methods and patterns thereof*, the link between several transactions or activities, *the origin, destination or use of funds, or* any other circumstance known to the obliged entity, including the consistency of the transaction or activity with *the information obtained pursuant to Chapter III including* the risk profile of the client.

3. By [two years after entry into force of this Regulation], AMLA shall develop draft implementing technical standards and submit them to the Commission for adoption. Those draft implementing technical standards shall specify the format to be used for the reporting of *suspicions pursuant to paragraph 1, point (a) and for the provision of transaction records* pursuant to paragraph 1, *point (b)*.

4. The Commission is empowered to adopt the implementing technical standards referred to in paragraph 3 of this Article in accordance with Article 42 of Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]*.
5. AMLA shall issue and periodically update guidance on indicators of **suspicious activity or behaviours**.
6. The person appointed in accordance with Article 9(3) shall transmit the information referred to in paragraph 1 of this Article to the FIU of the Member State in whose territory the obliged entity transmitting the information is established.
- 6a. *Obligated entities shall ensure that the person appointed in accordance with Article 9(3), as well as any employee or person in an equivalent position, including agents and distributors, involved in the performance of the tasks covered by this Article are protected against retaliation, discrimination and any other unfair treatment as a result of carrying out those tasks.***
- This paragraph shall not affect the protection that those persons may be entitled to under Directive (EU) 2019/1937.***

**6b.** *Where the activities of a partnership for information sharing result in the knowledge, suspicion or reasonable grounds to suspect that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist financing, obliged entities which identified suspicions in relation to the activities of their customers may designate one among them which shall be tasked with the submission of a report to the FIU pursuant to paragraph 1, point (a). Such submission shall include at least the name and contact details of all the obliged entities that participated in the activities giving rise to the report.*

*Where the obliged entities referred to in the first subparagraph are established in several Member States, the information shall be reported to each relevant FIU. To that end, obliged entities shall ensure that the report is made by an obliged entity within the territory of the Member States where the FIU is located.*

*Where the obliged entities decide not to avail themselves of the possibility to file a single report with the FIU pursuant to the first subparagraph, they shall include a reference in their report to the fact that the suspicion is the result of the activities of a partnership for information sharing.*

**6c.** *All the obliged entities referred to in the previous paragraph shall maintain a record of the report in accordance with Article 56*

**Specific provisions for reporting of suspicious transactions by certain categories of obliged entities**

1. By way of derogation from Article 50(1), Member States may allow obliged entities referred to in Article 3, point (3)(a) **and (b)** to transmit the information referred to in Article 50(1) to a self-regulatory body designated by the Member State.

The designated self-regulatory body shall forward the information referred to in the first subparagraph to the FIU promptly and unfiltered.

2. Notaries, lawyers and other independent legal professionals, auditors, external accountants and tax advisors shall be exempted from the requirements laid down in Article 50(1) to the extent that such exemption relates to information that they receive from, or obtain on, one of their clients, in the course of ascertaining the legal position of their client, or performing their task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings, whether such information is received or obtained before, during or after such proceedings.

***However, the exemption set out in the first subparagraph shall not apply when the obliged entities referred therein:***

***(a) take part in money laundering, its predicate offences or terrorist financing;***

***(b) provide legal advice for the purposes of money laundering, its predicate offences or terrorist financing, or***

*(c) know that the client is seeking legal advice for the purposes of money laundering, its predicate offences or terrorist financing. Knowledge or purpose may be inferred from objective factual circumstances.*

2a. *In addition to the situations referred to in paragraph 2, second subparagraph, where justified on the basis of the higher risks of money laundering, its predicate offences or terrorist financing associated with certain types of transactions, Member States may decide that the exception referred to in paragraph 2, first subparagraph does not apply to those types of transactions and, as appropriate, impose additional reporting obligations on the obliged entities referred to in that paragraph. Member States shall notify to the Commission any decision taken pursuant to this paragraph.*

#### *Article 52*

##### *Refraining from carrying out transactions*

1. Obligated entities shall refrain from carrying out transactions which they know or suspect to be related to proceeds of criminal activity or to terrorist financing until they have completed the necessary action in accordance with Article 50(1), second subparagraph, point (a), and have complied with any further specific instructions from the FIU or other competent authority in accordance with the applicable law. ***Obligated entities may carry out the transaction concerned after having assessed the risks of proceeding with the transaction if they have not received instructions to the contrary from the FIU within three working days of submitting the report of suspicious transaction.***

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2. Where refraining from carrying out transactions referred to in paragraph 1 is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected transaction, the obliged entities concerned shall inform the FIU immediately afterwards.

*Article 53*

**Disclosure to FIU**

Disclosure of information in good faith by an obliged entity or by an employee or director of such an obliged entity in accordance with Articles 50 and 51 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the obliged entity or its directors or employees in liability of any kind even in circumstances where they were not precisely aware of the underlying criminal activity and regardless of whether illegal activity actually occurred.

*Article 54*

**Prohibition of disclosure**

1. Obligated entities and their directors, ***employees, or persons in a comparable position, including agents and distributors***, shall not disclose to the customer concerned or to other third persons the fact ***that transactions or activities are being or have been assessed in accordance with Article 50***, that information is being, will be or has been transmitted in accordance with Article 50 or 51 or that a money laundering or terrorist financing analysis is being, or may be, carried out.



2. Paragraph 1 shall not apply to disclosures to competent authorities and to self-regulatory bodies where they perform supervisory functions, or to disclosure for the purposes of investigating and prosecuting money laundering, terrorist financing and other criminal activity.
3. By way of derogation from paragraph 1, disclosure may take place between the obliged entities that belong to the same group, or between those entities and their branches and subsidiaries established in third countries, provided that those branches and subsidiaries fully comply with the group-wide policies and procedures, including procedures for sharing information within the group, in accordance with Article 13, and that the group-wide policies and procedures comply with the requirements set out in this Regulation.

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4. By way of derogation from paragraph 1, disclosure may take place between the obliged entities as referred to in Article 3, point (3)(a) and (b), or entities from third countries which impose requirements equivalent to those laid down in this Regulation, who perform their professional activities, whether as employees or not, within the same legal person or a larger structure to which the person belongs and which shares common ownership, management or compliance control, including networks or partnerships.

5. For obliged entities referred to in Article 3, points (1), (2), (3)(a) and (b), in cases relating to the same ■ transaction involving two or more obliged entities, and by way of derogation from paragraph 1, disclosure may take place between the relevant obliged entities provided that they are located in the Union, or with entities in a third country which imposes requirements equivalent to those laid down in this Regulation, and that they ■ are subject to professional secrecy and personal data protection requirements.
6. Where the obliged entities referred to in Article 3, point (3)(a) and (b), seek to dissuade a client from engaging in illegal activity, that shall not constitute disclosure within the meaning of paragraph 1.

#### **Article 54a**

##### ***Threshold-based reports of transactions in certain high-value goods***

1. ***Traders in high-value goods shall report to the FIU all transactions involving the sale of the following high-value goods when those goods are acquired for non-commercial purposes:***
  - a) ***motor vehicles for a price of at least EUR 250 000 or the equivalent in national currency;***
  - b) ***watercrafts for a price of at least EUR 7 500 000 or the equivalent in national currency;***
  - c) ***aircrafts for a price of at least EUR 7 500 000 or the equivalent in national currency.***

2. *Credit and financial institutions that provide services in relation to the purchase of the goods referred to in paragraph 1 or the transfer of their ownership shall also report to the FIU all transactions they carry out for their customers in relation to those goods.*
3. *Reporting pursuant to paragraphs 1 and 2 shall be carried out within the time frames established by the FIU.*

*Chapter Va*

*Information sharing*

#### **Article 54b**

##### *Exchange of information in the framework of partnerships for information sharing*

1. *Members of partnerships for information sharing may share information among each other where strictly necessary for the purposes of complying with the obligations under Chapter III and Article 50 of this Regulation and in accordance with fundamental rights and judicial procedural safeguards.*

2. *Obligated entities intending to participate in a partnership for information sharing shall notify their respective supervisory authorities which shall, where relevant in consultation with each other and with the authorities in charge of verifying compliance with Regulation (EU) 2016/679, verify that the partnership for information sharing has mechanisms in place to ensure compliance with this Article and that the data protection impact assessment referred to in paragraph 4, point (h) has been carried out. The verification shall take place prior to the beginning of the activities of the partnership. Where relevant, the supervisory authorities shall also consult the national Financial Intelligence Units.*

*Responsibility for compliance with requirements under Union or national law shall remain with the participants in the partnership for information sharing.*

3. *Information exchanged in the framework of a partnership for information sharing shall be limited to:*

*(a) information on the customer, including any information obtained in the course of identifying and verifying the identity of the customer and, where relevant, the beneficial owner of the customer;*

*(b) information on the purpose and intended nature of the business relationship or/and occasional transaction between the customer and the obliged entity as well as, where applicable, the source of wealth and source of funds of the customer;*

- (c) information on customer transactions;*
- (d) information on higher and lower risk factors associated with the customer;*
- (e) the obliged entity's analysis of the risks associated with the customer pursuant to Article 16(2);*
- (f) information held by the obliged entity pursuant to Article 56(1) of this Regulation;*
- (g) information on suspicious transactions.*

*The information referred to in the first subparagraph shall only be exchanged to the extent that it is necessary for the purposes of carrying out the activities of the partnership for information sharing.*

- 4.** *The following specific conditions shall apply to the sharing of information within the context of a partnership for information sharing:*

- (a) obliged entities shall record all instances of information sharing within the partnership;*
- (b) obliged entities shall not rely solely on the information received in the context of the partnership to comply with the requirements of this Regulation;*

- (c) obliged entities shall not draw conclusions or take decisions that have an impact on the business relationship with the customer or on the performance of occasional transactions for the customer on the basis of information received from other participants in the partnership for information sharing without having assessed that information. Any information received in the context of the partnership that is used in an assessment resulting in a decision to refuse or terminate a business relationship or to carry out an occasional transaction shall be included in the records kept pursuant to Article 17(2), and that record shall contain reference to the fact that the information originated from a partnership for information sharing;*
- (d) obliged entities shall carry out their own assessment of transactions involving customers in order to assess which ones may be related to money laundering or terrorist financing or involve proceeds of criminal activity;*
- (e) obliged entities shall implement appropriate technical and organisational measures, including measures to allow pseudonymization, to ensure a level of security and confidentiality proportionate to the nature and extent of the information exchanged;*

***(f) the sharing of information shall be carried out only in relation to customers***

***(i) whose behaviour or transaction activities are associated with a higher risk of money laundering, its predicate offences or terrorist financing, as identified pursuant to the supranational or national risk assessments drawn up in accordance with Articles 7 and 8 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final];***

***(ii) who fall under any of the situations referred to in Articles 23, 24, 25 and 30 to 36 of this Regulation;***

***or (iii) for whom the obliged entities need to collect additional information in order to determine whether they are associated with a higher level of risk of money laundering, its predicate offenses or terrorist financing;***

***(g) information generated through the use of artificial intelligence, machine learning technologies or algorithms may only be shared where those processes were subject to adequate human oversight;***

***(h) a data protection impact assessment referred to in Article 35 of Regulation 2016/679 shall be carried out prior to the processing of any personal data;***

- (i) the competent authorities that are members of a partnership for information sharing shall only obtain, provide and exchange information to the extent that this is necessary for the performance of their tasks under relevant Union or national law;*
- (j) where competent authorities referred to in letter (c) of Article 2, point (31) participate in a partnership for information sharing, they shall only obtain, provide or exchange personal data and operational information in accordance with national law transposing Directive (EU) 2016/680 of the European Parliament and of the Council and with the applicable provisions of national criminal procedural law, including prior judicial authorisation or any other national procedural safeguard as required;*
- (k) the exchange of information on suspicious transactions pursuant to point (g) of paragraph 3 shall only take place where the FIU to which the suspicious transaction report was submitted pursuant to Articles 50 or 51 has agreed with such disclosure.*



5. *Information received in the context of a partnership for information sharing shall not be further transmitted, except where:*
- (a) the information is provided to another obliged entity pursuant to Article 39(1);*
  - (b) the information is to be included in a report submitted to the FIU or provided in response to a FIU request pursuant to Article 50(1);*
  - (c) the information is provided to AMLA pursuant to Article 79 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final];*
  - (d) the information is requested by law enforcement or judicial authorities, subject to any prior authorisations or other procedural guarantees as required under the national law.*
6. *Obligated entities that participate in partnerships for information sharing shall define policies and procedures for the sharing of information in their internal policies and procedures established pursuant to Article 7. Such policies and procedures shall:*
- (a) specify the assessment to be carried out to determine the extent of information to be shared, and where relevant for the nature of the information or the applicable judicial safeguards, provide for differentiated or limited access to information for members of the partnership;*

*(b) describe the roles and responsibilities of the parties to the partnership for information-sharing;*

*(c) identify the risk assessments that the obliged entity will take into account to determine situations of higher risk in which information can be shared.*

*The drawing up of internal procedures referred to in the first subparagraph shall take place prior to the participation in a partnership for information sharing.*

7. *Where supervisory authorities deem it necessary, obliged entities participating in a partnership for information sharing shall commission an independent audit of the functioning of that partnership and shall share the results with the supervisory authorities.*

**CHAPTER VI**  
**DATA PROTECTION AND RECORD-RETENTION**

*Article 55*

**Processing of   personal data**

1. To the extent that it is strictly necessary for the purposes of preventing money laundering and terrorist financing, obliged entities may process special categories of personal data referred to in Article 9(1) of Regulation (EU) 2016/679 and personal data relating to criminal convictions and offences referred to in Article 10 of that Regulation subject to the safeguards provided for in paragraphs 2 and 3.
2. Obligated entities shall be able to process personal data covered by Article 9 of Regulation (EU) 2016/679 provided that:
  - (a) obliged entities inform their customers or prospective customers that such categories of data may be processed for the purpose of complying with the requirements of this Regulation;
  - (b) the data originate from reliable sources, are accurate and up-to-date;

*(ba) the obliged entity does not take decisions that would lead to biased and discriminatory outcomes on the basis of that data;*

■

(c) the obliged entity adopts measures of a high level of security in accordance with Article 32 of Regulation (EU) 2016/679, in particular in terms of confidentiality.

3. ■ Obligated entities shall be able to process personal data covered by Article 10 of Regulation (EU) 2016/679 provided *that they comply with the conditions set out in points (a) and (b) of paragraph 2 and* that:

(a) such personal data relate to money laundering, its predicate offences or terrorist financing;

(b) the obliged entities have procedures in place that allow the distinction, in the processing of such data, between allegations, investigations, proceedings and convictions, taking into account the fundamental right to a fair trial, the right of defence and the presumption of innocence.

4. Personal data shall be processed by obliged entities on the basis of this Regulation only for the purposes of the prevention of money laundering and terrorist financing and shall not be further processed in a way that is incompatible with those purposes. The processing of personal data on the basis of this Regulation for commercial purposes shall be prohibited.
- 4a. *Obligated entities may adopt decisions resulting from automated processes, including profiling as defined in Article 4, point (4) of Regulation (EU) 2016/679, or from processes involving artificial-intelligence systems as defined in Article 3 of Regulation [please insert reference –Regulation EU-AI-Reg; COM(2021) 206 final], provided that:***
- (a) *the data processed by such systems is limited to data obtained pursuant to Chapter III of this Regulation;***
  - (b) *any decision to enter or refuse to enter into or maintain a business relationship with a customer or to carry out or refuse to carry out an occasional transaction for a customer, or to increase or decrease the extent of the customer due diligence measures applied pursuant to Article 16, is subject to meaningful human intervention to ensure the accuracy and appropriateness of such a decision, and***
  - (c) *the customer may obtain an explanation on the decision reached by the obliged entity, and may challenge that decision, except for a report as referred to in Article 50 of this Regulation.***

█

**Record retention**

1. Obligated entities shall retain the following documents and information **█** :
- (a) a copy of the documents and information obtained in the performance of customer due diligence pursuant to Chapter III, including information obtained through electronic identification means **█** ;
  - (aa) *a record of the analyses undertaken pursuant to Article 50 including the information and circumstances considered and the results of such analyses, whether or not such analyses result in a suspicious transaction report being made to the FIU, and a record of those suspicion transaction reports;*
  - (b) the supporting evidence and records of transactions, consisting of the original documents or copies admissible in judicial proceedings under the applicable national law, which are necessary to identify transactions.
  - (ba) *when they participate in partnerships for information sharing pursuant to Chapter Va, copies of the documents and information obtained in the framework of those partnerships, and records of all instances of information sharing.*

*Obligated entities shall ensure that the documents, information and records kept pursuant to this article are not redacted.*

2. By way of derogation from paragraph 1, obliged entities may decide to replace the retention of copies of the information by a retention of the references to such information, provided that the nature and method of retention of such information ensure that the obliged entities can provide immediately to competent authorities the information and that the information cannot be modified or altered.

Obliged entities making use of the derogation referred to in the first subparagraph shall define in their internal procedures drawn up pursuant to Article 7, the categories of information for which they will retain a reference instead of a copy or original, as well as the procedures for retrieving the information so that it can be provided to competent authorities upon request.

3. The information referred to in paragraphs 1 and 2 shall be retained for a period of five years *commencing on the date of the termination of the business relationship or on the date of the carrying out of the occasional transaction, or on the date of refusal to enter into a business relationship or carry out an occasional transaction. Without prejudice to retention periods for data collected for the purposes of other acts of Union law or national law complying with the GDPR*, obliged entities shall delete personal data *upon expiry of that retention period.*

*Competent authorities may require further retention of the information referred to in the first subparagraph on a case-by-case basis, provided that it is necessary for the prevention, detection or investigation of money laundering or terrorist financing. That further retention period shall not exceed five additional years.*

■

4. Where, on [the date of application of this Regulation], legal proceedings concerned with the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing are pending in a Member State, and an obliged entity holds information or documents relating to those pending proceedings, the obliged entity may retain that information or those documents, in accordance with national law, for a period of five years from [the date of application of this Regulation].

Member States may, without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings, allow or require the retention of such information or documents for a further period of five years where the necessity and proportionality of such further retention have been established for the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing.

#### *Article 57*

##### **Provision of records to competent authorities**

Obliged entities shall have systems in place that enable them to respond fully and speedily to enquiries from their FIU or from other competent authorities, in accordance with their national law, as to whether they are maintaining or have maintained, during a five-year period prior to that enquiry a business relationship with specified persons, and on the nature of that relationship, through secure channels and in a manner that ensures full confidentiality of the enquiries.



## CHAPTER VII

### Measures to mitigate risks deriving from anonymous instruments

#### Article 58

##### Anonymous accounts and bearer shares and bearer share warrants

1. Credit institutions, financial institutions and crypto-asset service providers shall be prohibited from keeping anonymous **bank and payment** accounts, anonymous passbooks, anonymous safe-deposit boxes or anonymous crypto-asset **accounts** as well as any account otherwise allowing for the anonymisation of the customer account holder **or the anonymisation or increased obfuscation of transactions, including through anonymity-enhancing coins.**

Owners and beneficiaries of existing anonymous **bank or payment** accounts, anonymous passbooks, anonymous safe-deposit boxes **held by credit or financial institutions**, or crypto-asset **accounts** shall be subject to customer due diligence measures before those accounts, passbooks, **or deposit boxes** are used in any way.

2. Credit institutions and financial institutions acting as acquirers **within the meaning Article 2, point (1) of Regulation (EU) 2015/751 of the European Parliament and of the Council<sup>38</sup>** shall not accept payments carried out with anonymous prepaid cards issued in third countries, unless otherwise provided in the regulatory technical standards adopted by the Commission in accordance with Article 22 on the basis of a proven low risk.

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<sup>38</sup> **Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (OJ L 123, 19.5.2015, p. 1).**

3. Companies shall be prohibited from issuing bearer shares, and shall convert all existing bearer shares into registered shares *or shall immobilise them in the meaning of Article 2(1)(3) of Regulation (EU) No 909/2014 or shall deposit them with a financial institution* by [2 years after the date of application of this Regulation]. However, companies with securities listed on a regulated market or whose shares are issued as intermediated securities *either through immobilisation within the meaning of Article 2(1)(3) of Regulation (EU) No 909/2014 or through a direct issuance in dematerialised form within the meaning of Article 2(1)(4) of Regulation (EU) No 909/2014* shall be permitted to *issue new and maintain existing* bearer shares. *For existing bearer shares that are not converted, immobilised or deposited by [2 years after the date of application of this Regulation], all voting rights and rights to distribution attached to these shares shall be automatically suspended until their conversion, immobilisation or deposit. All shares not converted, immobilised or deposited by [3 years after the date of application of this Regulation] shall be cancelled, leading to a share capital decrease of the corresponding amount.*

Companies shall be prohibited from issuing bearer share warrants that are not in intermediated form.

**Limits to large cash payments *in exchange for goods or services***

1. Persons trading in goods or providing services may accept or make a payment in cash only up to an amount of EUR 10 000 or equivalent amount in national or foreign currency, whether the transaction is carried out in a single operation or in several operations which appear to be linked.
2. Member States may adopt lower limits following consultation of the European Central Bank in accordance with Article 2(1) of Council Decision 98/415/EC<sup>39</sup>. Those lower limits shall be notified to the Commission within 3 months of the measure being introduced at national level.
3. When limits already exist at national level which are below the limit set out in paragraph 1, they shall continue to apply. Member States shall notify those limits within 3 months of the entry into force of this Regulation.
4. The limit referred to in paragraph 1 shall not apply to:
  - (a) payments between natural persons who are not acting in a professional function;

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<sup>39</sup> Council Decision of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

(b) payments or deposits made at the premises of credit institutions, *electronic money issuers as defined in Article 2(3) of Directive 2009/110/EC and payment service providers as defined in Article 4(11) of Directive (EU) 2015/2366*. In such cases, **payments or deposits above the limit shall be reported to the FIU within the time frames established by the FIU.**

**■**

5. Member States shall ensure that appropriate measures, including sanctions, are taken against natural or legal persons acting in their professional capacity which are suspected of a breach of the limit set out in paragraph 1, or of a lower limit adopted by the Member States.
6. The overall level of the sanctions shall be calculated, in accordance with the relevant provisions of national law, in such way as to produce results proportionate to the seriousness of the infringement, thereby effectively discouraging further offences of the same kind.

**6a.** *Where, by reason of force majeure, means of payment by funds as defined in Article 4, point (25) of Directive (EU) 2015/2366 other than banknotes and coins become unavailable at national level, Member States may temporarily suspend the application of paragraph 1 or, where applicable, of paragraph 2 and shall inform the Commission of the situation without delay. The Commission shall also be informed of the expected duration of the unavailability of means of payment by funds as defined in Article 4, point (25) of Directive (EU) 2015/2366 other than banknotes and coins and of the measures taken by Member States to reinstate their availability.*

*Where, on the basis of the information communicated by the Member State, the Commission considers that the suspension of the application of paragraph 1 or, where applicable, of paragraph 2 is not justified by a case of force majeure, it shall adopt a decision addressed to that Member State requesting the immediate lifting of the suspension referred to in the first subparagraph.*

**CHAPTER VIII**  
**FINAL PROVISIONS**

*SECTION I*  
*COOPERATION BETWEEN FIUS AND THE EPPO*

**Article 59a**

***Cooperation between FIUs and the EPPO***

- 1. Pursuant to Article 24 of Council Regulation (EU) 2017/1939, each FIU shall without undue delay report to the EPPO the results of its analyses and any additional relevant information where there are reasonable grounds to suspect that money laundering and other criminal activity are being or have been committed in respect of which the EPPO could exercise its competence in accordance with Article 22 and Article 25(2) and (3) of Council Regulation (EU) 2017/1939.***

***By [2 years after the data of entry into force of this Regulation], AMLA shall, in consultation with the EPPO, develop draft implementing technical standards and submit them to the Commission for adoption. Those draft implementing technical standards shall specify the format to be used by FIUs for the dissemination of information to the EPPO.***

2. *FIUs shall respond in a timely manner to requests for information by the EPPO in relation to money laundering and other criminal activity in respect of which the EPPO could exercise its competence in accordance with Article 22 and Article 25(2) and (3) of Council Regulation (EU) 2017/1939.*
3. *FIUs and the EPPO may exchange the results of strategic analyses, including typologies and risk indicators, where such analyses relate to money laundering and other criminal activity in respect of which the EPPO could exercise its competence in accordance with Article 22 and Article 25(2) and (3) of the EPPO Regulation.*

#### **Article 59b**

##### *Requests for information to EPPO*

1. *The EPPO shall respond without undue delay to reasoned requests for information by an FIU where that information is necessary for the performance of the FIU's functions under Chapter 3 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final].*
2. *The EPPO may postpone or refuse the provision of such information where this is likely to prejudice the proper conduct and confidentiality of an ongoing investigation. The EPPO shall communicate in a timely manner the postponement of or refusal to provide the requested information, including the reasons therefor, to the requesting FIU.*

SECTION 2

COOPERATION BETWEEN FIUS AND OLAF

Article 59c

*Cooperation between FIUs and OLAF*

1. *Pursuant to Article 8(3) of Regulation (EU, EURATOM) No 883/2013, each FIU shall transmit without delay the results of its analyses and any additional relevant information to the European Anti-Fraud Office (OLAF) where there are reasonable grounds to suspect that fraud, corruption or any other illegal activity affecting the financial interests of the Union are being or have been committed in respect of which OLAF could exercise its competence in accordance with Article 8 of Regulation (EU, EURATOM) No 883/2013.*
2. *FIUs shall respond in a timely manner to requests for information by the OLAF in relation to that fraud, corruption or any other illegal activity affecting the financial interests of the Union are being or have been committed in respect of which OLAF could exercise its competence in accordance with Article 8 of Regulation (EU, EURATOM) No 883/2013.*
3. *FIUs and OLAF may exchange the results of strategic analyses, including typologies and risk indicators, where such analyses relate to fraud, corruption or any other illegal activity affecting the financial interests of the Union are being or have been committed in respect of which OLAF could exercise its competence in accordance with Article 8 of Regulation (EU, EURATOM) No 883/2013.*



## Article 59d

### *Requests for information to OLAF*

1. *OLAF shall respond in a timely manner to reasoned requests for information by an FIU where that information is necessary for the performance of the FIU's functions under Chapter 3 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final].*
2. *OLAF may postpone or refuse the provision of such information where it is likely to have a negative impact on an ongoing investigation. OLAF shall communicate in a timely manner the postponement of or refusal to provide the requested information, including the reasons therefor, to the requesting FIU.*

*SECTION 3*  
*OTHER PROVISIONS*

*Article 60*

**Delegated acts**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 23, 24, **25, 28, 33, 42a, 49** shall be conferred on the Commission for an indeterminate period ■ from [date of entry into force of this Regulation].
3. The power to adopt delegated acts referred to in Articles 23, 24, **25, 28, 33, 42a, 49** may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 23, 24, **25 and 28** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of one month of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by one month at the initiative of the European Parliament or of the Council.
- 6a. *A delegated act adopted pursuant to 33, 42a and 49 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.***

*Article 61*

**Committee**

1. The Commission shall be assisted by the Committee on the Prevention of Money Laundering and Terrorist Financing established by Article 28 of Regulation *[please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final]*. That committee shall be a committee within the meaning of Regulation (EU) **182/2011**.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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## Article 62

### Review

By *[5 years from the date of application of this Regulation]*, and every three years thereafter, the Commission shall present a report to the European Parliament and to the Council on the application of this Regulation.

*The first report shall include an assessment of:*

- (a) the national systems for reporting of suspicions pursuant to Article 50 and obstacles and opportunities to establish a single reporting system at Union level;*
- (b) the adequacy of the beneficial ownership transparency framework to mitigate risks associated with legal entities and legal arrangements.*

## Article 63

### Reports

By *[3 years from the date of application of this Regulation]*, the Commission shall present reports to the European Parliament and to the Council assessing the need and proportionality of:

- (a) lowering the **25% threshold** for the identification of beneficial ownership of legal entities *through ownership interest*;

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- (ae) *extending the scope of high-value goods referred to in Annex IIIa to include high-value garments and accessories;*
- (af) *extending the scope of the threshold-based disclosures under Article 54b to cover the sale of other goods, of introducing harmonised formats for the reporting of those transactions based on the usefulness of those reports for FIUs, and of extending the scope of information collected from traders in free-trade zones;*
- (b) *adjusting* the limit for large cash payments.

*Article 64*

**Relation to Directive 2015/849**

References to Directive (EU) 2015/849 shall be construed as references to this Regulation and to Directive *[please insert reference – proposal for 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final]* and read in accordance with the correlation table set out in Annex IV.

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*Article 65*

**Entry into force and application**

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

It shall apply from *[3 years from its date of entry into force]*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

## Annex I

### Indicative list of risk variables

The following is a non-exhaustive list of risk variables that obliged entities shall take into account when drawing up their risk assessment in accordance with Article 8 determining to what extent to apply customer due diligence measures in accordance with Article 16:

- (a) Customer risk variables:
- (i) the customer's and the customer's beneficial owner's business or professional activity;
  - (ii) the customer's and the customer's beneficial owner's reputation;
  - (iii) the customer's and the customer's beneficial owner's nature and behaviour;
  - (iv) the jurisdictions in which the customer and the customer's beneficial owner are based;
  - (v) the jurisdictions that are the customer's and the customer's beneficial owner's main places of business;
  - (vi) the jurisdictions to which the customer and the customer's beneficial owner have relevant personal links;

- (b) Product, service or transaction risk variables:
- (i) the purpose of an account or relationship;
  - (ii) the regularity or duration of the business relationship;
  - (iii) the level of assets to be deposited by a customer or the size of transactions undertaken;
  - (iv) the level of transparency, or opaqueness, the product, service or transaction affords;
  - (v) the complexity of the product, service or transaction;
  - (vi) the value or size of the product, service or transaction.
- (c) Delivery channel risk variables:
- (i) the extent to which the business relationship is conducted on a non-face-to-face basis;
  - (ii) the presence of any introducers or intermediaries that the customer might use and the nature of their relationship with the customer;
- (d) Risk variable for life and other investment-related insurance:
- (i) the risk level presented by the beneficiary of the insurance policy.



## Annex II

### Lower risk factors

The following is a non-exhaustive list of factors and types of evidence of potentially lower risk referred to in Article 16:

- (1) Customer risk factors:
  - (a) public companies listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means), which impose requirements to ensure adequate transparency of beneficial ownership;
  - (b) public administrations or enterprises;
  - (c) customers that are resident in geographical areas of lower risk as set out in point (3);
- (2) Product, service, transaction or delivery channel risk factors:
  - (a) life insurance policies for which the premium is low;
  - (b) insurance policies for pension schemes if there is no early surrender option and the policy cannot be used as collateral;

- (c) a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages, and the scheme rules do not permit the assignment of a member's interest under the scheme;
  - (d) financial products or services that provide appropriately defined and limited services to certain types of customers, so as to increase access for financial inclusion purposes;
  - (e) products where the risks of money laundering and terrorist financing are managed by other factors such as purse limits or transparency of ownership (e.g. certain types of electronic money);
- (3) Geographical risk factors — registration, establishment, residence in:
- (a) Member States;
  - (b) third countries having effective AML/CFT systems;
  - (c) third countries identified by credible sources as having a low level of corruption or other criminal activity;
  - (d) third countries which, on the basis of credible sources such as mutual evaluations, detailed assessment reports or published follow-up reports, have requirements to combat money laundering and terrorist financing consistent with the revised FATF Recommendations and effectively implement those requirements.

### Annex III

#### Higher risk factors

The following is a non-exhaustive list of factors and types of evidence of potentially higher risk referred to in Article 16:

- (1) Customer risk factors:
  - (a) the business relationship *or occasional transaction* is conducted in unusual circumstances;
  - (b) customers that are resident in geographical areas of higher risk as set out in point (3);
  - (c) legal persons or *legal* arrangements that are personal asset-holding vehicles;
  - (d) *corporate entities* that have nominee shareholders or shares in bearer form;
  - (e) businesses that are cash-intensive;
  - (f) the ownership structure of the company appears unusual or excessively complex given the nature of the company's business;

- (g) customer is a third country national who applies for residence rights in a Member State in exchange of any kind of investment, including capital transfers, purchase or renting of property, investment in government bonds, investment in corporate entities, donation or endowment of an activity contributing to the public good and contributions to the state budget;
- (ga) customer is a legal entity or arrangement incorporated or created or established in a jurisdiction in which it has no real economic activity, substantial economic presence or apparent economic rationale;*
- (gb) customer is directly or indirectly owned by one or several entities or arrangements mentioned under (h);*

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- (2) Product, service, transaction or delivery channel risk factors:
- (a) private banking;
- (b) products or transactions that might favour anonymity;

- (c) payment received from unknown or unassociated third parties;
  - (d) new products and new business practices, including new delivery mechanism, and the use of new or developing technologies for both new and pre-existing products;
  - (e) transactions related to oil, arms, precious metals *or stones*, tobacco products, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare scientific value, as well as ivory and protected species;
- (3) Geographical risk factors:
- (a) third countries subject to increased monitoring or otherwise identified by the FATF due to the compliance weaknesses in their AML/CFT systems;
  - (b) third countries identified by credible sources/ acknowledged processes, such as mutual evaluations, detailed assessment reports or published follow-up reports, as not having effective AML/CFT systems;
  - (c) third countries identified by credible sources/ acknowledged processes as having significant levels of corruption or other criminal activity;

- (d) third countries subject to sanctions, embargos or similar measures issued by, for example, the Union or the United Nations;
- (e) third countries providing funding or support for terrorist activities, or that have designated terrorist organisations operating within their country.
- (ea) third countries identified by credible sources or pursuant to acknowledged processes as enabling financial secrecy by:***
- (i) Posing barriers to the cooperation and exchange of information with other jurisdictions;***
- (ii) Having strict corporate or banking secrecy laws which prevent institutions and their employees from providing customer information to competent authorities, including through fines and sanctions;***
- (iii) Having weak controls for the incorporation of legal entities or setting up of legal arrangements; or***
- (iv) Not requiring beneficial ownership information to be recorded or held in a central database or register.***

Annex IIIa

List of high value goods referred to in Article 3:

- (1) *Jewellery, gold- or silversmith articles of a value exceeding EUR 10 000;*
- (2) *Clocks and watches of a value exceeding EUR 10 000;*
- (3) *Motor vehicles of a price exceeding EUR 250 000 or equivalent in national currency;*
- (4) *Aircrafts of a price value exceeding EUR 7 500 000 or equivalent in national currency;*
- (5) *Watercrafts of a price value exceeding EUR 7 500 000 or equivalent in national currency.*

## Annex IV

Correlation table

Directive (EU) 2015/849	Directive (EU) XXXX/XX [please insert reference to proposal for 6th anti- money laundering Directive]	This Regulation
Article 1(1)	-	-
Article 1(2)	-	-
Article 1(3)		Article 2, point (1)
Article 1(4)		Article 2, point (1)
Article 1(5)		Article 2, point (2)
Article 1(6)		Article 2, points (1) and (2)
Article 2(1)		Article 3
Article 2(2)		Article 4
Article 2(3)		Article 5(1)
Article 2(4)		Article 5(2)
Article 2(5)		Article 5(3)
Article 2(6)		Article 5(4)
Article 2(7)		Article 5(5)



Article 2(8)		Article 6
Article 2(9)		Article 4(3) and Article 5(6)
Article 3, point (1)		Article 2, point (5)
Article 3, point (2)		Article 2, point (6)
Article 3, point (3)		Article 2, point (4)
Article 3, point (4)		Article 2, point (3)
Article 3, point (5)		Article 2, point (35)
Article 3, point (6)		Article 2, point (22)
Article 3, point (6) (a)		Article 42(1)
Article 3, point (6) (b)		Article 43
Article 3, point (6) (c)		Article 42(2)
Article 3, point (7)		Article 2, point (7)
Article 3, point (8)		Article 2, point (19)
Article 3, point (9)		Article 2, point (25)
Article 3, point (10)		Article 2, point (26)
Article 3, point (11)		Article 2, point (27)
Article 3, point (12)		Article 2, point (28)
Article 3, point (13)		Article 2, point (16)
Article 3, point (14)		Article 2, point (8)
Article 3, point (15)		Article 2, point (29)

Article 3, point (16)		Article 2, point (15)
Article 3, point (17)		Article 2, point (20)
Article 3, point (18)		Article 2, point (13)
Article 3, point (19)	-	-
Article 4	Article 3	
Article 5	-	-
Article 6	Article 7	
Article 7	Article 8	
Article 8(1)		Article 8(1)
Article 8(2)		Article 8(2) and (3)
Article 8(3)		Article 7(1)
Article 8(4)		Article 7(2)
Article 8(5)		Article 7(2) and (3)
Article 9		Article 23
Article 10		Article 58
Article 11		Article 15
Article 12	-	-
Article 13(1)		Article 16(1)
Article 13(2)		Article 16(2)
Article 13(3)		Article 16(2)
Article 13(4)		Article 16(4)

Article 13(5)		Article 37
Article 13(6)		Article 18(3)
Article 14(1)		Article 19(1)
Article 14(2)		Article 19(2)
Article 14(3)		Article 19(3)
Article 14(4)		Article 17
Article 14(5)		Article 21(2) and (3)
Article 15		Article 27
Article 16		Article 27(1)
Article 17	-	-
Article 18(1)		Article 28(1)
Article 18(2)		Article 28(2)
Article 18(3)	-	Article 28(3)
Article 18(4)	-	-
Article 18a(1)		Article 28(4)
Article 18a(2)	-	Article 23(5) and Article 29, point (a)
Article 18a(3)		Article 23(5) and Article 29, point (b)
Article 18a(4)	-	-
Article 18a(5)	-	-

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Article 21		Article 34
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Article 23		Article 36
Article 24		Article 31
Article 25		Article 38(1)
Article 26		Article 38
Article 27		Article 39
Article 28		Article 38(3)
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Article 30(4)	Article 10(5)	
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Article 30(5)a	Article 12(2)	
Article 30(6)	Article 11(1), (2) and (3)	

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Article 30(8)		Article 18(4)
Article 30(9)	Article 13	
Article 30(10)	Article 10(11) and (12)	
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Article 31(3)		Article 46(3)
Article 31(3a)	Article 10(1)	Article 48
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Article 31(5)	Article 10(5)	
Article 31(6)		Article 18(4)
Article 31(7)	Article 45(2)	
Article 31(7a)	Article 13	
Article 31(9)	Article 10(11) and (12)	
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Article 31a	Article 15(1)	
Article 32(1)	Article 17(1)	
Article 32(2)	Article 46(1)	

Article 32(3)	Article 17(2), (4) and (5)	
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Article 32(5)	Article 19(1)	
Article 32(6)	Article 19(2)	
Article 32(7)	Article 20(1)	
Article 32(8)	Article 17(3)	
Article 32(9)	Article 18(4)	
Article 32a(1)	Article 14(1)	
Article 32a(2)	Article 14(2)	
Article 32a(3)	Article 14(3)	
Article 32a(4)	Article 14(4)	
Article 32b	Article 16	
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Article 34(2)		Article 51(2)
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Article 45(1)		Article 13(1)
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Article 48(3)	Article 29(6)	
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Article 57a(2)	Article 50(2)	
Article 57a(3)	Article 50(3)	
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Article 68	-	-
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Annex IVa

*Precious metals referred to in Article 2 (37) of this Regulation include:*

- a) *Gold*
- b) *Silver*
- c) *Platinum*
- d) *Iridium*
- e) *Osmium*
- f) *Palladium*
- g) *Rhodium*



*h) Rhutenium*

*Precious stones refered to in Article 2 (37) of this Regulation include:*

*a) Diamond*

*b) Ruby*

*c) Sapphire*

*d) Emerald*

