



Council of the
European Union

Brussels, 12 February 2024
(OR. en)

6223/24

**Interinstitutional File:
2021/0250 (COD)**

LIMITE

EF 43
ECOFIN 137
DROIPEN 20
ENFOPOL 51
CT 13
FISC 24
COTER 30
CODEC 313

NOTE

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

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849
- Confirmation of the final compromise text with a view to agreement

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank¹,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C [...], [...], p. [...].

² OJ C , , p. .

(1) Directive (EU) 2015/849 of the European Parliament and of the Council³ 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 Council⁴ further strengthened by addressing emerging risks and increasing transparency of beneficial ownership. Notwithstanding its achievements, experience has shown that Directive (EU) 2015/849 should be further improved to adequately mitigate risks and to effectively detect criminal attempts to misuse the Union financial system for criminal purposes *and to further the integrity of the internal market*.

(2) Since the entry into force of Directive (EU) 2015/849, a number of areas have been identified where amendments would be needed to ensure the necessary resilience and capacity of the Union financial system to prevent money laundering and terrorist financing.

(3) Significant variations in practices and approaches by competent authorities across the Union, as well as the lack of sufficiently effective arrangements for cross-border cooperation were identified in the implementation of Directive (EU) 2015/849. It is therefore appropriate to define clearer requirements, which should contribute to smooth cooperation across the Union whilst allowing Member States to take into account the specificities of their national systems.

³ 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).

⁴ 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).

(4) This new instrument is part of a comprehensive package aiming at strengthening the Union's AML/CFT framework. Together, this instrument, Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 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').

(5) 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, other 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 those standards.

(6) Specific money laundering and terrorist financing threats, risks and vulnerabilities affecting certain economic sectors at national level diminish in distinct manners Member States ability to contribute to the integrity and soundness of the Union financial system. As such, it is appropriate to allow Member States, upon identification of such sectors and specific risks to decide to apply AML/CFT requirements to additional sectors than those covered by Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation]* **█**. With a view to preserving the effectiveness of the internal market and the Union AML/CFT system, the Commission should be able, with the support of AMLA, to assess whether the intended decisions of the Member States to apply AML/CFT requirements to additional sectors are justified. In cases where the best interests of the Union would be achieved at Union level as regards specific sectors, the Commission should inform that Member State that it intends to take action at Union level instead and the Member State should abstain from taking the intended national measures, *unless those measures are intended to address a urgent risk*.

(6a) Certain categories of obliged entities are subject to licensing or regulatory requirements for the provision of their services, whereas for other categories of operators access to the profession is not regulated. Regardless of the framework that applies to the exercise of the profession or activity, all obliged entities act as gatekeepers of the Union's financial system and must develop specific AML/CFT skills to fulfil this task. Member States should consider providing trainings to person wishing to enter those professions to enable them to perform their duties. Member States could consider, for example, including AML/CFT courses in the academic offer linked to those professions or cooperating with professional associations to train newcomers to the profession.

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(7a) Where obliged entities are not subject to specific licensing or registration requirements, Member States should have in place systems that enable the supervisors to know with certainty the scope of their supervisory population in order to ensure adequate supervision of that sector at any given moment. This does not mean that Member States need to impose AML/CFT specific registration requirements where this is not needed for the identification of obliged entities, as is the case for example where VAT registration enables identifying operators that carry out activities falling within the scope of AML/CFT requirements.

(8) Supervisors should ensure that, with regard to currency exchange offices, cheque cashing offices, trust or company service providers or gambling service providers, the persons who effectively manage the business of such entities and the beneficial owners of such entities ***are of good repute and*** act with honesty and integrity and possess knowledge and expertise necessary to carry out their functions. The criteria for determining whether or not a person complies with those requirements should, as a minimum, reflect the need to protect such entities from being misused by their managers or beneficial owners for criminal purposes. ***In order to foster a common approach to the verification by supervisors that the management and beneficial owners of obliged entities satisfy those requirements, AMLA should issue guidelines on the notions of good repute, honesty and integrity and the notions of knowledge and expertise.***

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(8b) Investor residence schemes present risks and vulnerabilities, in particular, in relation to money laundering, evasion of EU restrictive measures, corruption and tax evasion which may ultimately give rise to certain risks for the security of the Union. For example, weaknesses in some schemes' operations, including the absence of risk management processes or weak implementation of those processes can create opportunities for corruption, whereas weak or inconsistently applied checks on applicants' source of funds and source of wealth may lead to higher risks that the programmes are exploited by applicants for criminal purposes, aiming to legitimise funds obtained through illicit means. In order to avoid that risks stemming from the operation of such schemes affect the Union's financial system, Member States whose national law enables the granting of residence rights in exchange for any kind of investment should therefore put in place measures to mitigate the associated risks of money laundering, its predicate crimes and terrorist financing. Such measures should include an adequate risk management process, including the effective monitoring of its implementation, checks on the profile of the applicants, including obtaining information on their source of funds and source of wealth and the verification of information on applicants against information held by competent authorities.

(9) For the purposes of assessing the appropriateness of persons holding a management function in, or otherwise controlling, obliged entities, any exchange of information about criminal convictions should be carried out in accordance with Council Framework Decision 2009/315/JHA⁵ and Council Decision 2009/316/JHA⁶. *In addition, supervisors should be able to access all information necessary to verify the knowledge and expertise of the senior management, as well as their honesty and integrity and that of the obliged entity's beneficial owners, including information available through reliable and independent sources.*

⁵ Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA (OJ L 93, 7.4. 2009, p. 33).

⁶ Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4. 2009, p. 23).

(10) The Commission is well placed to review specific cross-border threats that could affect the internal market and that cannot be identified and effectively combatted by individual Member States. It should therefore be entrusted with the responsibility for coordinating the assessment of risks relating to cross-border activities. Involvement of the relevant experts, such as the Expert Group on Money Laundering and Terrorist Financing and the representatives from the FIUs, as well as, where appropriate, from other Union-level bodies *including AMLA*, is essential for the effectiveness of the process of the assessment of risks. National risk assessments and experience are also an important source of information for that process. Such assessment of the cross-border risks by the Commission should not involve the processing of personal data. In any event, data should be fully anonymised. National and Union data protection supervisory authorities should be involved only if the assessment of the risk of money laundering and terrorist financing has an impact on the privacy and data protection of individuals. ***To maximise synergies between the assessment of risks at supranational and at national level, the Commission and the Member States should endeavour to apply consistent methodologies.***

(11) The findings of the risk assessment at Union level can assist competent authorities and obliged entities in the identification, understanding, management and mitigation of the risk of money laundering and terrorist financing, as well as of risks of non-application and evasion of targeted financial sanctions. It is therefore important that the findings of the risk assessment are made public.

(12) Member States remain best placed to identify, assess, understand and decide how to mitigate risks of money laundering and terrorist financing affecting them directly. Therefore, each Member State should take the appropriate steps to properly identify, assess and understand its money laundering and terrorist financing risks, as well as risks of non-implementation and evasion of targeted financial sanctions and to define a coherent national strategy to put in place actions to mitigate those risks. Such national risk assessment should include a description of the institutional structure and broad procedures of the Member State's AML/CFT regime, as well as the allocated human and financial resources to the extent that this information is available. *In order to maintain an ongoing understanding of risks, Member States should regularly update their national risk assessment, and may also supplement it with targeted updates and assessments of risks associated with specific sectors, products or services.*

(12b) *Legal entities and legal arrangements may provide a means for criminals to hide behind a veil of legitimacy and may thus be misused to launder illicit proceeds, whether domestically or across borders. To mitigate these risks, it is important that Member States understand the risks associated with the legal entities and legal arrangements that are in their territory, whether because the entities are established there, or because trustees of express trusts or persons holding equivalent positions in similar legal arrangements are established or reside there, or they administer the legal arrangement from there. In the case of legal arrangements, given the settlor's right as to the choice of the law that governs the arrangement, it is equally important that Member States have an understanding of the risks associated with the legal arrangements that can be created under their law, irrespective of whether their laws explicitly regulate them, or their creation finds its source in the freedom of contract of the parties and is recognised by national Courts.*

(12c) Given the integrated nature of the international financial system and openness of the Union economy, risks associated with legal entities and legal arrangements expand beyond those in the Union territory. It is thus important that the Union and its Member States have an understanding of the exposure to risks emanating from foreign legal entities and legal arrangements. Such an assessment of risks does not need to address each individual foreign legal entity or legal arrangement that has a sufficient link with the Union, whether by virtue of it acquiring real estate or being awarded public procurements, or because of transactions with obliged entities that allow them to access the Union's financial system and economy. The risk assessment should however enable the Union and its Member States to understand what type of foreign legal entities and legal arrangements enjoy such an access to the Union's financial system and economy, and what types of risks are associated with that access.

(13) The results of risk assessments should, **■** be made available to obliged entities in a timely **■** manner to enable them to identify, understand, manage and mitigate their own risks. *Those results can be shared in a summarised form, also made available to the public, and should not include classified information or personal data.*

(14) In addition, to identify, understand, manage and mitigate risks at Union level to an even greater degree, Member States should make available the results of their risk assessments to each other, to the Commission and to AMLA. *Classified information or personal data should not be included in those transmissions unless deemed strictly necessary for the performance of AML/CFT tasks.*

(14a) In order to effectively mitigate the risks identified in the national risk assessment, Member States should ensure consistent action at national level, whether by appointing an authority to coordinate the national response, or by establishing a mechanism to that end. Irrespective of the approach chosen, Member States should ensure that the authority or mechanism has sufficient powers and resources to perform this task effectively and ensure adequate responses to the identified risks.

(15) To be able to review the effectiveness of their systems for combating money laundering and terrorist financing, Member States should maintain, and improve the quality of, relevant statistics. With a view to enhancing the quality and consistency of the statistical data collected at Union level, the Commission and the AMLA should keep track of the Union-wide situation with respect to the fight against money laundering and terrorist financing and should publish regular overviews.

(16) The FATF has developed standards for jurisdictions to identify, and assess the risks of potential non-implementation or evasion of the proliferation financing-related targeted financial sanctions, 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/CFSP⁷ and (CFSP) 2016/849⁸ as well as Council Regulations (EU) 267/2012⁹ and (EU) 2017/1509¹⁰, 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 available funds or other assets to designated persons or entities incumbent upon all natural or legal persons in the Union.***

⁷ 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).

⁸ 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).

⁹ 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).

¹⁰ 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).

(17) In order to reflect the latest developments at international level *particularly the revised FATF recommendations, and ensure a comprehensive framework for implementing targeted financial sanctions, requirements have* been introduced by this Directive to identify, understand, manage and mitigate risks of potential non-implementation or evasion of targeted financial sanctions at Union level and at Member State level.

(18) Central registers of beneficial ownership information are crucial in combating the misuse of *corporate and other* legal entities *as well as of legal arrangements. Therefore, Member States should ensure that the beneficial ownership information of legal entities and legal arrangements, information on nominee arrangements and information on foreign legal entities and foreign legal arrangements are held in a central register.* To ensure that the registers of beneficial ownership information are easily accessible and contain high-quality data, consistent rules on the collection and storing of this information *by the registers* should be introduced. *Information held in central registers should be accessible in a readily usable and machine readable format.*

(19) With a view to enhancing transparency in order to combat the misuse of *corporate and other* legal entities, Member States should ensure that beneficial ownership information is **registered** in a central register located outside the company, in full compliance with Union law. Member States **should**, for that purpose, use a central database, which collects beneficial ownership information, or the business register, or another central register. Member States may decide that obliged entities are responsible for **providing certain information to** the register. Member States should make sure that in all cases that information is made available to competent authorities and FIUs and is provided to obliged entities when they take customer due diligence measures.

(20) Beneficial ownership information of *express* trusts and similar legal arrangements should be registered where the trustees and persons holding equivalent positions in similar legal arrangements are established or where they reside, *or where the legal arrangement is administered*. In order to ensure the effective monitoring and registration of information on the beneficial ownership of *express* trusts and similar legal arrangements, cooperation between Member States is also necessary. The interconnection of Member States' registries of beneficial owners of *express* trusts and similar legal arrangements **■ should** make this information accessible, and **■ should** also ensure that the multiple registration of the same *express* trusts and similar legal arrangements is avoided within the Union.

(21) Timely access to information on beneficial ownership should be ensured in ways, which avoid any risk of tipping off the company concerned.

(22) The accuracy of data included in the beneficial ownership registers is fundamental for all of the relevant authorities and other persons allowed access to that data, and to make valid, lawful decisions based on that data. Therefore, **■ Member States should ensure that the entities in charge of the central registers verify, within a reasonable time upon submission** of the beneficial ownership information **■ and on a regular basis thereafter, that that the information submitted is adequate, accurate and up to date. Member States should ensure that entities **■ in charge of central registers are able to request any information **■ they need to verify beneficial ownership information and nominee information, as well as situations where there is no beneficial owner or where the beneficial owner(s) could not be determined , in which case the information provided to the register should be accompanied by a justification including all relevant supporting documents to enable the register to ascertain whether this is the case. Member States should **■ also ensure that the entities in charge of the registers have at their disposal adequate tools to carry out verifications, including automated verifications in a manner that safeguards fundamental rights and avoids discriminatory outcomes.********

(22a) It is important that Member States entrust the entities in charge of managing the registers with sufficient powers and resources to verify beneficial ownership and the veracity of information provided to them, and to report any suspicion to their FIU. Such powers should extend to the conduct of inspections at the premises of the legal entities and to obliged entities that act as trustees of express trusts or persons holding equivalent positions in similar legal arrangements, whether carried out by the entities in charge of the registers or by other authorities on their behalf. Member States should ensure that adequate safeguards are applied where those trustees or persons holding an equivalent position in a similar legal arrangement are legal professionals, or where their business premises coincide with their private residence. Such powers should extend to representatives of foreign legal entities and foreign legal arrangements in the Union, where those legal entities and arrangements have registered offices or representatives in the Union.

(22b) Where a verification of the beneficial ownership information leads an entity in charge of the register to conclude that there are inconsistencies or errors in that information, or where that information otherwise fails to fulfil the requirements, it should be possible for the entity to withhold or suspend the proof of registration in the beneficial ownership register, until the failures have been corrected.

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(22c) Entities in charge of central registers should carry out their functions free of undue influence, including any undue political or industry influence in relation to the verification of information, the imposition of measures or sanctions and the granting of access to persons with a legitimate interest. To this end, the entities in charge of the registers should have in place policies to prevent and manage conflict of interest.

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(22d) Beneficial ownership registers are well placed to identify, in a rapid and efficient manner, the individuals who ultimately own or control legal entities and arrangements, including individuals designated in relation to targeted financial sanctions. Timely detection of ownership and control structures contributes to improving the understanding of the exposure to risks of non-implementation and evasion of targeted financial sanctions, and to the adoption of mitigating measures to reduce such risks. It is therefore important that such registers be required to screen the beneficial ownership information they hold against designations in relation to targeted financial sanctions, both immediately upon such designation and regularly thereafter, in order to detect whether changes in the ownership or control structure of the legal entity or legal arrangement are conducive to risks of evasion of targeted financial sanctions.

The indication in the registers that legal entities or legal arrangements are associated with persons or entities subject to targeted financial sanctions should contribute to the activities of competent authorities and of the authorities in charge of implementing EU restrictive measures.

(23) Moreover, the reporting of discrepancies between beneficial ownership information held in the central registers and beneficial ownership information available to obliged entities and, where applicable, competent authorities, is an effective mechanism to verify the accuracy of the information. Any such discrepancy should be swiftly identified, reported and corrected, ***in line with data protection requirements.***

(25) Where the reporting of discrepancies by the FIUs and other competent authorities would jeopardise an *analysis of a suspicious transaction or an* on-going criminal investigation, the FIUs or other competent authorities should delay the reporting of the discrepancy until the moment at which the reasons for not reporting cease to exist. Furthermore, FIUs and competent authorities should not report any discrepancy when this would be contrary to any confidentiality provision of national law or would constitute a tipping-off offence.

(26) To ensure a level playing field in the application of the concept of beneficial owner, it is of utmost importance that, across the Union, legal entities obtain benefit from uniform reporting channels and means. To that end, the format for the submission of beneficial ownership information to the relevant national registers should be uniform and offer guarantees of transparency and legal certainty.

(27) In order to ensure a level playing field among the different types of legal forms, trustees should also be required to obtain and hold beneficial ownership information and to communicate that information to a central register or a central database.

(27a) It is essential that the information on beneficial ownership remains available through the national registers and through the system of interconnection of beneficial ownership registers for a minimum of five years after the grounds for registering beneficial ownership information have ceased to exist. Member States should be able to provide by law additional grounds for the processing of beneficial ownership information for purposes other than AML/CFT, if such processing meets an objective of public interest and constitutes a necessary and proportionate measure in a democratic society to the legitimate aim pursued.

(27b) FIUs, other competent authorities and self-regulatory bodies should have immediate, unfiltered, direct and free access to information on beneficial ownership for the purposes of preventing, detecting, investigating and prosecuting money laundering, its predicate offences or terrorist financing. Obligated entities should also have access to beneficial ownership registers when carrying out due diligence. Member States may choose to make access by obliged entities subject to the payment of a fee. However, those fees should be strictly limited to what is necessary to cover the costs of ensuring the quality of the information held by the registers and of making the information available, and should not undermine the effective access to beneficial ownership information.

*(28) **Direct, timely and unfiltered** access to beneficial ownership information **by national public authorities is also crucial to ensure the proper implementation of EU restrictive measures, to prevent the risk of non-implementation and evasion of EU restrictive measures, as well as to investigate breaches. For these reasons, competent authorities identified under the relevant Council Regulations adopted on the basis of Article 215 of the Treaty on the Functioning of the European Union should have direct and immediate** access to **the information held in the interconnected registers.***

(29) **It should be possible for Union bodies and agencies that play a role in the Union AML/CFT framework to access beneficial ownership information in the performance of their duties. This is the case for the European Public Prosecutor's Office, but also for the EU Anti-Fraud Office in the performance of its investigations, as well as for Europol and Eurojust when supporting investigations by national authorities. As a supervisory authority, AMLA is granted access to beneficial ownership information when performing supervisory activities. In order to ensure that AMLA can effectively support the activities of Financial Intelligence Units, it should also be able to access beneficial ownership information in the context of joint analyses.**

(30) **In order to limit interferences with the right to the respect for private life and to the protection of personal data, access to information held in beneficial ownership registers by the public should be conditional upon the demonstration of a legitimate interest. Divergent approaches by Member States to the verification that such a legitimate interest exists may hamper the harmonised implementation of the AML/CFT framework and the preventive purpose for which such access by the members of the public is allowed. It is therefore necessary to devise a framework for the recognition and verification of legitimate interest at Union level, in full respect of the Charter of Fundamental Rights. Where a legitimate interest exists, the public should be able to access information on beneficial ownership of legal entities. Such legitimate interest to access beneficial ownership information should be presumed for certain categories of the public. Access on the basis of a legitimate interest should not be conditional upon the legal status or form of the person requesting access.**

(31) **Persons acting for the purposes of journalism and civil society organisations play a vital role in democratic societies. Non-governmental organisations, academics and investigative journalists have also contributed to the objectives of the Union in the fight against money laundering, its predicate offences and terrorist financing. Those entities, when operating in the aforementioned fields, should therefore be found to have a legitimate interest to access beneficial ownership information, which is of vital importance for them to undertake their functions and exert public scrutiny, as appropriate. The ability to access the registers should not be conditional on the medium or platform through which they carry out their activities, or on previous experience in the field. In order to enable these categories to carry out their activities effectively and avoid risks of retaliation, they should be able to access information on legal entities and legal arrangements without demonstrating a link with those entities or arrangements. As provided for under Union data protection rules, any access by beneficial owners to information on the processing made of their personal data should not adversely affect the rights and freedoms of others, including right to security of the person. Disclosure to the beneficial owner that persons acting for the purposes of journalism or civil society organisations have consulted their personal data risks undermining the safety of journalists and of members of civil society organisations who carry out investigations into potential criminal activities. Therefore, in order to reconcile the right to the protection of personal data with the freedom of information and expression for journalists in accordance with Article 85 of Regulation (EU) 2016/6679 and in order to ensure civil society organisations' role in the prevention, investigation and detection of money laundering, its predicate offences or terrorist financing in accordance with Article 23(1), point (d) of that Regulation, beneficial ownership registers should not share with beneficial owners information on processing of their data by those categories of the public, but only the fact that persons acting for the purposes of journalism or civil society organisations consulted their data.**

(32) **Integrity of business transactions is critical to the well-functioning of the internal market and of the Union's financial system. To that end, it is important that persons who wish to do business with legal entities or legal arrangements in the Union are able to access information on their beneficial owners to verify that their potential business counterparts are not involved in money laundering, its predicate offences or terrorist financing. The ability of criminals to hide their identity behind corporate structures is a common and evidenced typology, and enabling those who could enter into transactions with a legal person or legal arrangement to become aware of the identity of the beneficial owners contributes to combating their misuse for criminal purposes. A transaction is not limited to trading activities or the provision or buying of products or services, but may also include, for example, situations where a person is likely to invest funds as defined in Article 4, point (25) of Directive (EU) 2015/2366 or crypto-assets in the entity or arrangement, or to acquire the legal entity. Therefore, the requirement of legitimate interest to access beneficial ownership information should not be considered met only by persons carrying out economic or commercial activities.**

(33) **Given the cross-border nature of money laundering, its predicate offence and terrorist financing, it should be recognised that competent authorities of third countries have a legitimate interest to access beneficial ownership information on Union’s legal entities and arrangements, where such access is needed in the context of specific investigations to perform their tasks with respect to AML/CFT. Similarly, entities that are subject to AML/CFT requirements in third countries should be able to access the beneficial ownership information in the Union registers when they are required to take customer due diligence measures in compliance with AML/CFT requirements in those countries in relation to legal entities and arrangements established in the Union. Any access to information contained in the beneficial ownership registers should be compliant with Union law on the protection of personal data, and in particular with Chapter V of Regulation (EU) 2016/769. To this end, beneficial ownership registers should also consider whether requests from persons established outside the Union may fall within the conditions within which a derogation under Article 49 of that Regulation may be availed of. The Court has repeatedly confirmed that the fight against money laundering, its predicate offences and terrorist financing is an objective of general public interest, and the public security objectives connected to it. In order to preserve the integrity of investigations and analyses by third-country Financial Intelligence Units and law enforcement and judicial authorities, beneficial ownership registers should refrain from disclosing to the beneficial owners any processing of their personal data by those authorities in so far as this would adversely affect their rights. However, in order to preserve the data subject rights, the beneficial ownership registers should refrain from disclosing that information until that disclosure would no longer jeopardise an investigation or analysis. That time limit should be set to a maximum period of five years, and should be extended only upon a motivated request by the authority in the third country.**

(34) ***In order to ensure an access regime which is sufficiently flexible and able to adapt to emerging new circumstances, Member States should be able to grant access to beneficial ownership information, on a case-by-case basis, to any person who can demonstrate a legitimate interest linked to the prevention and combating of ML and TF.*** Member States should ***collect information about cases of legitimate interest that go beyond the categories identified in this Directive, and notify them to the Commission.***

(34a) Criminals may misuse legal entities at any point of their existence. However, certain phases in the lifecycle of legal entities may be associated with higher risks, such as at the company formation stage, or when there are changes in the company structure, such as conversion, merger or division, which allow criminals to acquire control of the legal entity. The Union framework provides oversight by public authorities over those phases of a legal entity's existence under Directive (EU) 2017/1132. In order to ensure that those public authorities can carry out their activities effectively and contribute to the prevention of the misuse of legal entities for criminal purposes, they should have access the information contained in the interconnected beneficial ownership register.

(34b) With a view to ensuring the legality and regularity of expenditure included in the accounts submitted to the Commission under Union funding programmes, programme authorities have to collect and store in their management and control systems information on the beneficial owners of the recipients of Union funding. It is therefore necessary to ensure that programme authorities in the Member States have access to beneficial ownership information held in the interconnected registers to fulfil their duties to prevent, detect, correct and report on irregularities, including fraud, pursuant to Regulation (EU) 2021/1060 of the European Parliament and the Council¹¹.

(34c) In order to protect the Union financial interest, the Member States authorities implementing the Facility under Regulation (EU) 2021/241 of the European Parliament and of the Council¹² establishing the Recovery and Resilience Facility should have access the interconnected register to collect the beneficial ownership information on the recipient of Union funds or contractor required under that Regulation.

¹¹ *Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, OJ L 231 30.6.2021, p. 159–706.*

¹² *Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021, p. 17–75.*

(34d) Corruption in public procurement harms the public interest, undermines public trust and has a negative impact on the lives of citizens. Given the vulnerability of public procurement procedures to corruption, fraud and other predicate offences, it should be possible for national authorities with competences in public procurement procedures to consult the beneficial ownership registers of Member States to ascertain the identity of the natural persons who ultimately own or control the tenderers, and identify cases where there is a risk that criminals may be involved in the procurement procedure. Timely access to information held in the beneficial ownership register is crucial to ensuring that public procurement authorities can fulfil their functions effectively, including by detecting instances of corruption in public procurement procedures. The notion of public authorities in relation to procurement procedures should encompass the concept of contracting authorities in Union legislation relating to public procurement for goods, services and concessions as well as any public authority designated by the Member States to verify the legality of public procurement procedures, which is not a competent authority for AML/CFT purposes.

(34e) Products such as customer screening offered by third-party providers support obliged entities in the performance of customer due diligence. Such products provide them with a holistic view over the customer, which enables them to make informed decisions as to their risk classification, mitigating measures to be applied and possible suspicions regarding the customers' activities. These products also contribute to the work of competent authorities in the analysis of suspicious transactions and investigations into potential cases of money laundering, its predicate offences and terrorist financing by complementing information on beneficial ownership with other technical solutions that enable competent authorities to have a broader view of complex criminal schemes, including through the localisation of their perpetrators. These solutions therefore play a critical role in the increasingly complex and fast movements that characterise money laundering schemes. By virtue of their well-established function in the compliance infrastructure, it is justified to consider that they hold a legitimate interest in accessing information held by the registers, provided that the data obtained from the register are offered only to obliged entities and competent authorities in the Union for the performance of tasks related to preventing and fighting money laundering, its predicate offences and terrorist financing.

(34f) In order to avoid divergent approaches towards the implementation of the concept of legitimate interest for the purpose of accessing beneficial ownership information, the procedures for the recognition of such a legitimate interest should be harmonised. This should include common templates for the application and recognition of legitimate interest, which would facilitate mutual recognition by registers across the Union. To that end, the Commission should be empowered to adopt implementing acts setting out harmonised templates and procedures.

(34g) To ensure that the processes for granting access to those with a previously verified legitimate interest are not unduly burdensome, access may be renewed on the basis of simplified procedures through which the entities in charge of the register ensure that information previously obtained for purposes of verification are correct and relevant, and updated where necessary.

(35) Moreover, with the aim of ensuring a proportionate and balanced approach and to guarantee the rights to private life and personal data protection, Member States **should** provide for exemptions to the disclosure of the personal information on the beneficial owner through the registers of beneficial ownership information and to access to such information, in exceptional circumstances, where that information would expose the beneficial owner to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation. It should also be possible for Member States to require online registration in order to identify any person who requests information from the register, as well as the payment of a fee for access to the information in the register.

However, those fees should be strictly limited to what is necessary to cover the costs of ensuring the quality of the information held by the registers and of making the information available, and should not undermine the effective access to beneficial ownership information.

(35a) Identification of applicants is necessary to ensure that only persons with a legitimate interest can access beneficial ownership information. However, such an identification process should be carried out in a way that it does not lead to discrimination, including based on the applicants' country of residence or nationality. To that end, Member States should provide sufficient identification mechanisms, including but not limited to eIDAS-notified digital identity solutions and relevant qualified trust services, to enable persons with a legitimate interest to effectively access beneficial ownership information.

(36) Directive (EU) 2018/843 achieved the interconnection of Member States' central registers holding beneficial ownership information through the European Central Platform established by Directive (EU) 2017/1132 of the European Parliament and of the Council¹³. *The interconnection has proven to be essential for an effective cross-border access to the beneficial ownership information by competent authorities, obliged entities and persons with a legitimate interest. It will require continued development to implement the evolved regulatory requirements on time prior to the transposition of the Directive. Therefore, the work on interconnection should continue with* involvement of Member States in the functioning of the whole system, *which* should be ensured by means of a regular dialogue between the Commission and the representatives of Member States on the issues concerning the operation of the system and on its future development.

¹³ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

(37) Through the interconnection of Member States' beneficial ownership registers, both national and cross-border access to information on the beneficial ownership of legal arrangements contained in each Member State's register should be granted based on the definition of legitimate interest, by virtue of a decision taken by the relevant entity of that Member State. To avoid that decisions on limiting access to beneficial ownership information which are not justified cannot be reviewed, appeal mechanisms against such decisions should be established. With a view to ensuring coherent and efficient registration and information exchange, Member States should ensure that their entity in charge of the register cooperates with its counterparts in other Member States, sharing information concerning trusts and similar legal arrangements governed by the law of one Member State and administered in another Member State *or whose trustee is established or resides in another Member State*.

(38) Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁴ applies to the processing of personal data for the purposes of this Directive. Natural persons whose personal data are held in national registers as beneficial owners should be informed about the applicable data protection rules. Furthermore, only personal data that is up to date and corresponds to the actual beneficial owners should be made available and the **beneficial owners** should be informed about their rights under the Union legal data protection framework and the procedures applicable for exercising those rights. **■**

¹⁴ 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).

(39) Delayed access to information by FIUs and other competent authorities on the identity of holders of bank, and payment *accounts, securities accounts, custodial crypto-asset accounts* and safe-deposit boxes, especially anonymous ones, hampers the detection of transfers of funds relating to money laundering and terrorist financing. It is therefore essential to establish centralised automated mechanisms, such as a register or data retrieval system, in all Member States as an efficient means to get timely access to information on the identity of holders of bank and payment accounts, *securities accounts, custodial crypto-asset accounts* and safe-deposit boxes, their proxy holders, and their beneficial owners. ***Such information should include the historical information on closed customer-account holders, bank, payment, securities, crypto-asset accounts and safe-deposit boxes.*** When applying the access provisions, it is appropriate for pre-existing mechanisms to be used provided that national FIUs can access the data for which they make inquiries in an immediate and unfiltered manner. Member States should consider feeding such mechanisms with other information deemed necessary and proportionate for the more effective mitigation of risks relating to money laundering and the financing of terrorism. Full confidentiality should be ensured in respect of such inquiries and requests for related information by FIUs and competent authorities.

(39a) Virtual IBANs are virtual numbers issued by credit and financial institutions that allow payments to be routed to physical bank or payment accounts. While virtual IBANs can be used by businesses for legitimate purposes, for example, to streamline the process of collecting and sending payments across borders, they are also associated with increased risks of money laundering, its predicate offences or terrorist financing as they can be used to obscure the identity of the account holder, making it difficult for FIUs to trace the flow of funds, identify the location of the account and impose the necessary measures, including the suspension or monitoring of the account. In order to mitigate those risks and facilitate the tracing and detection of illicit flows by FIUs, the centralised automated mechanisms should include information on virtual IBANs associated with a bank or payment account.

(40) In order to respect privacy and protect personal data, the minimum data necessary for the carrying out of AML/CFT investigations should be held in centralised automated mechanisms for bank, **payment, securities and crypto-asset** accounts, such as registers or data retrieval systems. It should be possible for Member States to determine which **additional** data it is useful and proportionate to gather, taking into account the systems and legal traditions in place to enable the meaningful identification of the beneficial owners. When transposing the provisions relating to those mechanisms, Member States should set out retention periods equivalent to the period for retention of the documentation and information obtained within the application of customer due diligence measures. It should be possible for Member States to **exceptionally** extend the retention period, **provided good reasons are given**. The additional retention period should not exceed an additional five years. That period should be without prejudice to national law setting out other data retention requirements allowing case-by-case decisions to facilitate criminal or administrative proceedings. Access to those mechanisms should be on a need-to-know basis.

(41) Through the interconnection of Member States' centralised automated mechanisms, the national FIUs would be able to obtain swiftly cross-border information on the identity of holders of bank, **payment, securities and crypto-asset** accounts and safe deposit boxes in other Member States, which would reinforce their ability to effectively carry out financial analysis and cooperate with their counterparts from other Member States. Direct cross-border access to information on bank, **payment, securities and crypto-asset** accounts and safe deposit boxes would enable **FIUs** to produce financial analysis within a sufficiently short timeframe to **trace funds funnelled through various accounts, including by using virtual IBANs**, detect potential money laundering and terrorist financing cases and guarantee a swift law enforcement action. **AMLA should also be provided with direct access to the interconnected centralised automated mechanisms in order to provide operational support to FIUs in the framework of joint analysis exercises.**

(42) In order to respect the right to the protection of personal data and the right to privacy, and to limit the impact of cross-border access to the information contained in the national centralised automated mechanisms, the scope of information accessible through the bank account registers (BAR) central access point would be restricted to the minimum necessary in accordance with the principle of data minimisation in order to allow the identification of any natural or legal persons holding or controlling **payment, bank, securities, and crypto-asset accounts** and safe-deposit boxes. **FIUs and AMLA** should be granted immediate and unfiltered access to the central access point. Member States should ensure that the FIUs' staff maintain high professional standards of confidentiality and data protection, that they are of high integrity and are appropriately skilled. Moreover, Member States should put in place technical and organisational measures guaranteeing the security of the data to high technological standards.

(43) The interconnection of Member States' centralised automated mechanisms (central registries or central electronic data retrieval systems) containing information on bank and payment accounts and safe-deposit boxes through the BAR single access point necessitates the coordination of national systems having varying technical characteristics. For this purpose, technical measures and specifications taking into account the differences between the national centralised automated mechanisms should be developed.

(44) Real estate is an attractive commodity for criminals to launder the proceeds of their illicit activities, as it allows obscuring the true source of the funds and the identity of the beneficial owner. Proper and timely identification of *property as well as of natural persons, legal entities and legal arrangements* owning real estate by FIUs and other competent authorities is important both for detecting money laundering schemes as well as for freezing and confiscation of assets, *as well as for administrative freezing measures implementing targeted financial sanctions*. It is therefore important that Member States provide FIUs and *other* competent authorities with *immediate and direct* access to information which allows the *proper conduct of analyses and investigations into potential criminal cases involving real estate. In order to facilitate effective access, that information should be provided free of charge through a single access point, by digital means and where possible in machine-readable format.*

The information should include historical information, including the history of property proprietorship, the prices at which the property has been acquired in the past and related encumbrances over a defined period in the past in order to enable FIUs and other competent authorities in that Member State to analyse and identify any suspicious activities pertaining to land or real estate property transactions which could be indicative of money laundering or other types of criminality. This historical information concerns types of information already collected when carrying out land or real estate property transactions. There are thus no new obligations imposed upon affected persons, ensuring that the legitimate expectations of those concerned are duly respected. Given the cross-border relevance of criminal schemes involving real estate, it is appropriate to identify a minimum set of information that competent authorities should be able to access and share with their counterparts in other Member States.

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(45) All Member States have, or should, set up operationally independent and autonomous FIUs to collect and analyse the information which they receive with the aim of establishing links between suspicious transactions and underlying criminal activity in order to prevent and combat money laundering and terrorist financing. The FIU should be the single central national unit responsible for the receipt and analysis of suspicious transaction reports, reports on cross-border physical movements of cash ■ *through the Customs Information System, on transactions reported when certain thresholds are exceeded (threshold-based disclosures)* as well as other information relevant to money laundering, its predicate offences or terrorist financing submitted by obliged entities. Operational independence and autonomy of the FIU should be ensured by granting the FIU the authority and capacity to carry out its functions freely, including the ability to take autonomous decisions as regards analysis, requests and dissemination of specific information. In all cases, the FIU should have the independent right to forward or disseminate information to competent authorities.

The FIU should be provided with adequate financial, human and technical resources, in a manner that secures its autonomy and independence and enables it to exercise its mandate effectively. The FIU should be able to obtain and deploy the resources needed to carry out its functions, on an individual or routine basis, free from any undue political, government or industry influence or interference, which might compromise its operational independence. ***In order to assess the fulfilment of those requirements and identify weaknesses and best practices, AMLA should be empowered to coordinate the organisation of peer reviews of FIUs.***

(45a) FIU staff should be of high integrity and appropriately skilled, and should maintain high professional standards. FIUs should have in place procedures to effectively prevent and manage conflicts of interest. Given the nature of their work, FIUs are recipients of, and have access to, large amounts of sensitive personal and financial information. FIU staff should therefore have appropriate skills when it comes to the ethical use of big data analytical tools. Moreover, FIUs' activities may have implications for individuals' fundamental rights, such as the right to the protection of personal data, right to private life and right to property. FIUs should therefore designate a Fundamental Rights Officer who may be a member of the existing staff of the FIU. The tasks of the Fundamental Rights Officer should include, without impeding or delaying the activities of the FIUs, monitoring and promoting the FIU's compliance with fundamental rights, providing advice and guidance to the FIU on fundamental rights implications of its policies and practices, scrutinising the lawfulness and ethics of the FIU's activities and issuing non-binding opinions. The designation of a Fundamental Rights Officer would help to ensure that in carrying out their tasks, FIUs respect and protect affected individuals' fundamental rights.

(45b) FIUs should be able to disseminate information to competent authorities tasked with combatting money laundering, its predicate offences, and terrorist financing. This should be understood to include authorities with an investigative, prosecutorial or judicial role. Across Member States, other authorities have dedicated roles connected to the fight against money laundering, its predicate offences and terrorist financing, and FIUs should also be able to provide them with the results of their operational or strategic analyses, where they consider this to be relevant to their functions. The results of those analyses provide meaningful intelligence used for the development of leads in the course of investigative and prosecutorial work. The source of the suspicious transaction report should not be disclosed in the dissemination. This, however, should not be seen as precluding FIUs from disseminating relevant information including, for example, information on IBAN numbers, BIC or SWIFT codes. In addition, FIUs should be able to share other information in their possession including upon request by competent authorities. In exercising their autonomy and independence, FIUs should consider how a refusal to provide information may impact cooperation and the broader goal of combatting money laundering, its predicate offences and terrorist financing. Such refusals should be limited to exceptional circumstances, for example when the information originates from another FIU that has not granted consent to its further dissemination, or where the FIU has reasons to believe that the information will not be used for the purposes for which it was requested. In such cases the FIU should provide reasons for the refusal. Such reasons could include clarifying, for example, that the information is not in the possession of the FIU, that consent for further dissemination has not been granted, or other generic categories of exceptional circumstances pursuant to Union law.

(45c) Effective cooperation and information exchange between FIUs and supervisors is of crucial importance for the integrity and stability of the financial system. It ensures a comprehensive and consistent approach to preventing and combating money laundering, its predicate offences and terrorist financing, enhances the effectiveness of the Union AML/CFT regime and safeguards the economy from the threats posed by illicit financial activities. Information in the possession of FIUs pertaining to, for example, the quality and quantity of suspicious transaction reports submitted by obliged entities, the quality and timeliness of obliged entities' responses to requests for information by the FIUs and information on ML/TF typologies, trends and methods can help supervisors identify areas where risks are higher or where compliance is weak and, hence, provide them with an insight into whether supervision needs to be strengthened in relation to specific obliged entities or sectors. To this end, FIUs should provide supervisors, either spontaneously or upon request, with certain types of information that may be relevant for the purposes of supervision.

(46) FIUs play an important role in identifying the financial operations of terrorist networks, especially cross-border, and in detecting their financial backers. Financial intelligence might be of fundamental importance in uncovering the facilitation of terrorist offences and the networks and schemes of terrorist organisations. FIUs maintain significant differences as regards their functions, competences and powers.

The current differences should however not affect an FIU's activity, particularly its capacity to develop preventive analyses in support of all the authorities in charge of intelligence, investigative and judicial activities, and international cooperation. In the exercise of their tasks, it has become essential to identify the minimum set of data FIUs should have swift access to and be able to exchange without impediments with their counterparts from other Member States. In all cases of suspected money laundering, its predicate offences and in cases involving the financing of terrorism, information should flow directly and quickly without undue delays. It is therefore essential to further enhance the effectiveness and efficiency of FIUs, by clarifying the powers of and cooperation between FIUs.

(47) The powers of FIUs include the right to access directly or indirectly the 'financial', 'administrative' and 'law enforcement' information that they require in order to combat money laundering, its associated predicate offences and terrorist financing. The lack of definition of what types of information these general categories include has resulted in FIUs having been granted with access to considerably diversified sets of information which has an impact on FIUs' analytical functions as well as on their capacity to cooperate effectively with their counterparts from other Member States, ***including in the framework of joint analysis exercises***. It is therefore necessary to define the minimum sets of 'financial', 'administrative' and 'law enforcement' information that should be made directly or indirectly available to every FIU across the Union. ***FIUs also receive and store in their databases, or have access to, information related to transactions that are reported when specified thresholds are exceeded (threshold-based reports)***.

These reports are an important source of information and are widely used by FIUs in the context of domestic and joint analyses. Therefore, threshold-based reports are among the types of information exchanged through the FIU.net. Direct access is an important prerequisite for the operational effectiveness and responsiveness of FIUs. To this end, it should be possible for Member States to provide FIUs with direct access to a broader set of information than those required by this Directive. At the same time, this Directive does not require Member States to set up new databases or registers in the cases where certain types of information, for example, information on procurement, is spread across various repositories or archives. Where a database or register has not been set up, Member States should take other necessary measures to ensure that FIUs can obtain that information in an expeditious manner. Moreover, FIUs should be able to obtain swiftly from any obliged entity all necessary information relating to their functions. An FIU should also be able to obtain such information upon request made by another FIU and to exchange that information with the requesting FIU.

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(47b) Access should be considered direct and immediate when the information is contained in a database, register or an electronic data retrieval system enabling the FIU to obtain it directly, through an automated mechanism, without the involvement of an intermediary. Where the information is held by another entity or authority, direct access entails that those authorities or entities transmit it to the FIU in an expeditious manner without interfering with the content of the requested data or the information to be provided. The information should not undergo any filtering. In some situations, however, the confidentiality requirements attached to the information may not allow the provision of the information in an unfiltered manner. This is the case for example, where tax information can only be provided to FIUs upon agreement of a tax authority in a third country, where direct access to law enforcement information may jeopardise an ongoing investigation, as well as in relation to passenger name record data collected pursuant to Directive (EU) 2016/681. In those cases, Member States should make every effort to ensure effective access to the information by FIUs, including by allowing FIUs to have access under similar conditions to those offered to other authorities at national level to facilitate their analytical activities.

(48) The vast majority of FIUs have been granted the power to take urgent action and suspend or withhold consent to a transaction in order to **perform the analyses**, confirm the suspicion and disseminate the results of the analytical activities to the competent authorities. However, there are certain variations in relation to the duration of the **suspension** powers across the different Member States, with an impact not only on the postponement of activities that have a cross-border nature through FIU-to-FIU cooperation, but also on individuals' fundamental rights.

Furthermore, in order to ensure that FIUs have the capacity to promptly restrain criminal funds or assets and prevent their dissipation, also for seizure purposes, FIUs should be granted the power to suspend the use of a bank or payment account, ***crypto-asset account or a business relationship*** in order to analyse the transactions performed through the account, confirm the suspicion and disseminate the results of the analysis to the competent authorities. Given that postponement powers have an impact on the right to property, ***FIUs should be able to suspend transactions, accounts or business relationships for a limited period of time in order to preserve the funds, carry out the necessary analyses and disseminate the results of the analyses to the competent authorities for the possible adoption of appropriate measures. Given the more significant impact on an affected person's fundamental rights, the suspension of an account or business relationship should be imposed for a more limited timeframe, which should be set at five working days. Member States can define a longer period of suspension where, pursuant to national law, the FIU exercises competences in the area of asset recovery and carries out functions of tracing, seizing, freezing or confiscating criminal assets. In such cases, the preservation of affected persons' fundamental rights should be guaranteed and FIUs should exercise their functions in accordance with the appropriate national safeguards. FIUs should lift the suspension of the transaction, account or business relationship as soon as such suspension is no longer necessary. Where a longer suspension period is defined, affected persons whose transactions, accounts or business relationships have been suspended should have the possibility to challenge the suspension order before a court.***

(48a) In specific circumstances, FIUs should be able to request, also on behalf of another FIU, an obliged entity to monitor, for a defined period of time, transactions or activities carried out through a bank, payment or crypto-asset account or another type of business relationship in relation to persons presenting a significant risk of money laundering, its predicate offences or terrorist financing. Closer monitoring of an account or a business relationship can provide the FIU with additional insights into the account holder's transaction patterns and lead to the timely detection of unusual or suspicious transactions that may warrant further action by the FIU, including the suspension of the account or the business relationship, the analysis of the intelligence gathered and its dissemination to investigative and prosecutorial authorities. FIUs should also be able to alert obliged entities of information relevant for the performance of customer due diligence. Such alerts can help obliged entities to inform their customer due diligence procedures and ensure their consistency with risks, update their risk assessment and risk management systems accordingly and provide them with additional information that may trigger the need for enhanced due diligence on certain customers or transactions that present higher risks.

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(49) For the purposes of greater transparency and accountability and to increase awareness with regard to their activities, FIUs should issue activity reports on an annual basis. These reports should at least provide statistical data in relation to the suspicious transaction reports received *and the follow-up given*, the number of disseminations made to national competent authorities *and the follow-up provided to those disseminations*, the number of requests submitted to and received by other FIUs as well as information on trends and typologies identified. This report should be made public except for the elements which contain sensitive and classified information. ■

(49a) At least once annually, the FIU should provide obliged entities with feedback on the quality of suspicious transaction reports, their timeliness, the description of suspicion and any additional documents provided. Such feedback can be provided to individual obliged entities or groups of obliged entities and should aim to further improve the obliged entities' ability to detect and identify suspicious transactions and activities, improve the quality of suspicious transaction reports, enhance the overall reporting mechanisms and provide obliged entities with important insights into trends, typologies and risks associated with money laundering, its predicate offences and terrorist financing. When determining the type and frequency of the feedback, FIUs should as much as possible take into account areas where improvements in reporting activities may be needed. In order to support a consistent approach across FIUs and adequate feedback to obliged entities, AMLA should issue recommendations to FIUs on best practices and approaches towards providing feedback. Where this would not jeopardize analytical or investigative work, FIUs may consider providing feedback on the use made or outcome of suspicious transaction reports, whether on individual reports or in an aggregated manner. FIUs should also provide customs authorities with feedback, at least once per year, on the effectiveness and follow-up to reports on cross-border physical movements of cash.

(50) The purpose of the FIU is to collect and analyse information with the aim of establishing links between suspicious transactions and underlying criminal activity in order to prevent and combat money laundering and terrorist financing, and to disseminate the results of its analysis as well as additional information to the competent authorities where there are grounds to suspect money laundering, associated predicate offences or financing of terrorism. An FIU should not refrain from or refuse the exchange of information to another FIU, spontaneously or upon request, for reasons such as a lack of identification of an associated predicate offence, features of criminal national laws and differences between the definitions of associated predicate offences or the absence of a reference to particular associated predicate offences. ***An FIU may impose certain restrictions and limitations with regard to the further use of information it provides to another FIU. The recipient FIU should use the information only for the purposes for which it was sought or provided.*** An FIU should grant its prior consent to another FIU to forward the information to other competent authorities regardless of the type of possible associated predicate offence ***and regardless of whether the predicate offence has been identified at the time of the exchange,*** in order to allow the dissemination function to be carried out effectively.

Such prior consent to further dissemination should be granted promptly and should not be refused unless it would fall beyond the scope of application of the AML/CFT provisions or would not be in accordance with fundamental principles of national law. FIUs should provide an explanation regarding any refusal to grant consent. FIUs have reported difficulties in exchanging information based on differences in national definitions of certain predicate offences, such as tax crimes, which are not harmonised by Union law. Such differences should not hamper the mutual exchange, the dissemination to other competent authorities and the use of that information. FIUs should rapidly, constructively and effectively ensure the widest range of international cooperation with third countries' FIUs in relation to money laundering, associated predicate offences and terrorist financing in accordance with the applicable data protection rules for data transfers, FATF Recommendations and Egmont Principles for Information Exchange between Financial Intelligence Units. *To this end, FIUs should be encouraged to conclude bilateral agreements and memoranda of understanding with counterparts from third countries, while taking account of any fundamental rights obligations and of the need to protect the rule of law.*

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(51) FIUs should use secure facilities, including protected channels of communication , to cooperate and exchange information amongst each other . In this respect, a ■ system for the exchange of information between FIUs of the Member States ('FIU.net') should be set up. The system should be managed and hosted by AMLA ***and should provide for the highest level of security and the full encryption of the information exchanged.*** The FIU.net should be ■ used by FIUs to cooperate and exchange information amongst each other and may also be used, where appropriate ***and subject to a decision by AMLA,*** to exchange information with FIUs of third countries and with other authorities and Union bodies, ***offices and agencies.*** The functionalities of the FIU.net should be used by FIUs to their full potential. Those functionalities should allow FIUs to match their data with data of other FIUs in ■ ***a pseudonymous manner,*** with the aim of detecting subjects of the FIU's interests in other Member States and identifying their proceeds and funds, whilst ensuring full protection of personal data. ***In order to identify links between financial information and criminal intelligence, FIUs should also be able to use the functionalities FIU.net to pseudonymously match their data with information held by Union bodies, offices and agencies insofar as such cross-matching falls within the latter's respective legal mandates and in full respect of the applicable data protection rules.***

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(52) It is important that FIUs cooperate and exchange information effectively with one another. In this regard, AMLA should provide the necessary assistance, not only by means of coordinating joint analyses of cross-border suspicious transaction reports, but also by developing draft **implementing and** regulatory technical standards concerning the format to be used for the exchange of information between FIUs, **the template for the submission of suspicious transaction reports and the relevance and selection criteria** to be taken into account when determining if a suspicious transaction report concerns another Member State as well as **guidelines** on the nature, features and objectives of operational and of strategic analysis **and on the procedures to be put in place when forwarding and receiving a suspicious transaction report which concerns another Member State and the follow-up to be given.** AMLA should also set up a peer review process in order to strengthen consistency and effectiveness of FIUs' activities and to facilitate the exchange of best practices between FIUs.

(52a) FIUs are responsible for receiving suspicious transaction reports from obliged entities established in the territory of their Member States. Certain suspicions reported to FIUs may however pertain to activities carried out by obliged entities in other Member States, where they operate without an establishment. In those cases, it is important that FIUs disseminate these reports to the counterpart in the Member State where the suspicion arose, without attaching conditions to the use of those reports. The FIU.net system enables the dissemination of such cross-border reports. In order to enhance this functionality, the system is undergoing upgrades to enable the fast dissemination of such reports and to support significant exchanges of information between FIUs, and therefore effective implementation of this Directive.

(53) Time limits for exchanges of information between FIUs are necessary in order to ensure quick, effective and consistent cooperation. Time limits should be set out in order to ensure effective sharing of information within reasonable time or to meet procedural constraints. Shorter time limits should be provided in exceptional, justified and urgent cases where the requested FIU is able to access directly the databases where the requested information is held. In the cases where the requested FIU is not able to provide the information within the set time limits, it should inform **the requesting FIU thereof.**

(54) The movement of illicit money traverses borders and may affect different Member States. The cross-border cases, involving multiple jurisdictions, are becoming more and more frequent and increasingly significant, also due to the activities carried out by obliged entities on a cross-border basis. In order to deal effectively with cases that concern several Member States, FIUs should be able to go beyond the simple exchange of information for the detection and analysis of suspicious transactions and activities and share the analytical activity itself. FIUs have reported certain important issues which limit or condition the capacity of FIUs to engage in joint analysis. Carrying out joint analysis of suspicious transactions and activities will enable FIUs to exploit potential synergies, to use information from different sources, to obtain a full picture of the anomalous activities and to enrich the analysis. FIUs should be able to conduct joint analyses of suspicious transactions and activities and to set up and participate in joint analysis teams for specific purposes and limited period with the assistance of AMLA. **In this regard, AMLA should be provided with an operational node in the FIU.net system in order to be able to receive information from FIUs and provide operational support to FIUs in the context of the joint analysis of cross-border cases.**

(54a) The participation of third parties, including Union bodies, offices and agencies, may be instrumental for the successful outcome of FIUs' analyses, including joint analyses. Therefore, FIUs may invite third parties to take part in the joint analysis where such participation would fall within the respective mandates of those third parties. Participation by third parties in the analytical process may help identify links between financial intelligence and criminal information and intelligence, enrich the analysis and determine if there are indications that a criminal offence has been committed.

(55) Effective supervision of all obliged entities is essential to protect the integrity of the Union financial system and of the internal market. To this end, Member States should deploy effective and impartial AML/CFT supervision and set forth the conditions for effective, timely and sustained cooperation between supervisors.

(56) Member States should ensure effective, impartial and risk-based supervision of all obliged entities, preferably by public authorities via a separate and independent national supervisor. National supervisors should be able to perform a comprehensive range of tasks in order to exercise effective supervision of all obliged entities.

(57) The Union has witnessed on occasions a lax approach to the supervision of the obliged entities' duties in terms of anti-money laundering and counter-terrorist financing duties. Therefore, it has become of utmost importance that competent national supervisors, as part of the integrated supervisory mechanism put in place by this Directive and Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]*, obtain clarity as to their respective rights and obligations.

(58) In order to assess and monitor more effectively and regularly the risks the obliged entities are exposed to and the **internal policies, procedures and controls they put in place to manage and mitigate those risks, and to** implement targeted financial sanctions, it is necessary to clarify that national supervisors are both entitled and bound to conduct all the necessary off-site, on-site and thematic investigations and any other inquiries and assessments as they see necessary. **They should also be able to react without undue delay to any suspicion of non-compliance with applicable requirements and to take appropriate supervisory measures to address allegations of non-compliance.** This will not only help supervisors decide on those cases where the specific risks inherent in a sector are clear and understood, but also provide them with the tools required to further disseminate relevant information to obliged entities in order to inform their understanding of money laundering and terrorist financing risks.

(59) Outreach activities, including dissemination of information by the supervisors to the obliged entities under their supervision, is essential to guarantee that the private sector has an adequate understanding of the nature and level of money laundering and terrorist financing risks they face. As the implementation of AML/CFT requirements by obliged entities involves the processing of personal data, it is important that supervisors are acquainted with guidance and other publications issued by the data protection authorities, either at national level or at Union level through the European Data Protection Board, and that they include this information, as appropriate, in their disseminations to the entities under their supervision.

(60) Supervisors should adopt a risk-based approach to their work, which should enable them to focus their resources where the risks are the highest, whilst ensuring that no sector or entity is left exposed to criminal attempts to launder money or finance terrorism. To that end, supervisors should plan their activities on a yearly basis. In doing so, they should not only ensure risk-based coverage of the sectors under their supervision, but also that they are able to react promptly in the event of objective and significant indications of breaches within an obliged entity, including in particular following public revelations or information submitted by whistleblowers.

Supervisors should also ensure transparency on the supervisory activities they carried out, such as supervisory colleges they organised and attended, on-site and off-site supervisory actions taken and the pecuniary sanctions or administrative measures imposed. AMLA should play a leading role in fostering a common understanding of risks, and should therefore be entrusted with developing the benchmarks and a methodology for assessing and classifying the inherent and residual risk profile of obliged entities, as well as the frequency at which such risk profile should be reviewed.

(61) The disclosure to FIUs of facts that could be related to money laundering or to terrorist financing by supervisors is one of the cornerstones of efficient and effective supervision of money laundering and terrorist financing risks, *and allows supervisors to address shortcomings in the reporting process of obliged entities. To that effect, supervisors should be able to report to the FIU instances of suspicions that the obliged entity failed to report or to complement reports submitted by the obliged entity with additional information, which they detect in the course of their supervisory activities. Supervisors should also be able to report suspicions of money laundering, its predicate offences or terrorist financing by the employees of obliged entities, or persons in an equivalent position, by its management or its beneficial owners.* It is therefore necessary for Member States to put in place a system that ensures that FIUs are properly and promptly informed. *The reporting of suspicions to the FIU should not be understood as replacing the obligation for public authorities to report to the relevant competent authorities any criminal activity they uncover or become aware of in the course of performing their tasks. Information covered by the legal privilege should not be collected nor consulted in the context of supervisory tasks, unless the exemptions set out in Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] apply. Should supervisors encounter or come into possession of such information, they should not take it into account for the purposes of their supervisory activities, nor report it to the FIU.*

(62) Cooperation between national supervisors is essential to ensure a common supervisory approach across the Union. To be effective, this cooperation has to be leveraged to the greatest extent possible and regardless of the respective nature or status of the supervisors. In addition to traditional cooperation - such as the ability to conduct investigations on behalf of a requesting supervisory authority – it is appropriate to mandate the set-up of AML/CFT supervisory colleges *in the financial sector* with respect to obliged entities *that operate in several Member States through establishments and with respect to obliged entities which are part of a cross-border group* . *Financial supervisors of third country may be invited to those colleges under certain conditions, including confidentiality requirements equivalent to those incumbent on Union financial supervisors and compliance with Union law regarding the processing and transmission of personal data. The activities of AML/CFT supervisory colleges should be proportionate to the level of risk to* which *the credit or financial institution is exposed, and the scale of cross-border activity*.

(62a) Obligated entities operating in the non-financial sector may also carry out activities across borders or be part of groups that carry out cross-border activities. It is therefore appropriate to lay down rules that define the functioning of supervisory colleges for groups carrying out both financial and non-financial activities, and enabling the establishment of colleges in the non-financial sector, taking into account the need to apply additional safeguards in relation to groups or cross-border entities providing legal services. In order to ensure effective cross-border supervision in the non-financial sector, AMLA should provide support to the functioning of such colleges and regularly provide its opinion on the functioning of those colleges as implementation of the enabling framework provided by this Directive progresses.

(63) Where an obliged entity operates establishments in another Member State, including through a network of agents, the supervisor of the home Member State should be responsible for supervising the obliged entity's application of group-wide AML/CFT policies and procedures. This could involve on-site visits in establishments based in another Member State. The supervisor of the home Member State should cooperate closely with the supervisor of the host Member State and should inform the latter of any issues that could affect their assessment of the establishment's compliance with the host AML/CFT rules.

(64) Where an obliged entity operates establishments in another Member State, including through a network of agents, the supervisor of the host Member State **■** *should retain* responsibility for enforcing the establishment's compliance with AML/CFT rules, including, where appropriate, by carrying out onsite inspections and offsite monitoring and by taking appropriate and proportionate measures to address **■** *breaches* of those requirements. *The same should apply to other types of infrastructure of obliged entities that operate under the freedom to provide services, where that infrastructure is sufficient to require supervision by the supervisor of the host Member State. The supervisor of the host Member State should cooperate closely with the supervisor of the home Member State and should inform the latter of any issues that could affect its assessment of the obliged entity's application of **■** AML/CFT policies and procedures **■**, and to allow the supervisor of the home Member State to take measures to address any breach identified. However, where serious, repeated or systematic breaches **■** of AML/CFT rules that require immediate remedies are detected, the supervisor of the host Member State should be able to apply appropriate and proportionate temporary remedial measures, applicable under similar circumstances to obliged entities under their competence, to address such serious, repeated or systematic breaches **■**, where appropriate, with the assistance of, or in cooperation with, the supervisor of the home Member State.*

(64a) In areas that are not harmonised at Union level, Member States may adopt national measures, even when these measures constitute restrictions to the freedoms of the internal market. This is the case, for example, of measures taken to regulate the provision of gambling services, particularly when those activities are carried out online, without any infrastructure in the Member State. However, to be compatible with Union law, such measures must aim to attain a general interest, be non-discriminatory and suitable for achieving that objective, and must not go beyond what is strictly necessary to achieve it. Where Member States subject the provision of services that are regulated under the Union AML/CFT framework to specific authorisation requirements, such as the obtention of a licence, they should also be responsible for the supervision of those services. The requirement to supervise those services does not prejudice the conclusions that the Court of Justice may draw on the compatibility of national measures with Union law.

(64b) In light of anti-money laundering vulnerabilities related to the electronic money issuing, the payment services and the crypto-assets service providing industry, it should be possible for Member States to require that those providers established on their territory in forms other than a branch or through other types of infrastructure and the head office of which is situated in another Member State appoint a central contact point. Such a central contact point, acting on behalf of the appointing institution, should ensure the establishments' compliance with AML/CFT rules.

(65) To ensure better coordination of efforts and contribute effectively to the needs of the integrated supervisory mechanism, the respective duties of supervisors in relation to those obliged entities should be clarified, and specific, proportionate cooperation mechanisms should be provided for.

(66) Cross-border groups need to have in place far-reaching group-wide policies and procedures. To ensure that cross-border operations are matched by adequate supervision, there is a need to set out detailed supervisory rules, enabling supervisors of the home Member State and those of the host Member State cooperate with each other to the greatest extent possible, regardless of their respective nature or status, and with AMLA to assess the risks, monitor developments that could affect the various entities that form part of the group, coordinate supervisory action *and settle disputes*. Given its coordinating role, AMLA should be entrusted with the duty to *develop* the draft regulatory technical standards defining the detailed respective duties of the home and host supervisors of groups, and the modalities of cooperation between them. The supervision of the effective implementation of group policy on AML/CFT should be done in accordance with the principles and modalities of consolidated supervision as laid down in the relevant European sectoral legislation.

(67) Directive (EU) 2015/849 included a general requirement for supervisors of home and host Member States to cooperate. Such requirements were subsequently strengthened to prevent that the exchange of information and cooperation between supervisors were prohibited or unreasonably restricted. However, in the absence of a clear legal framework, the set-up of AML/CFT supervisory colleges has been based on non-binding guidelines. It is therefore necessary to establish clear rules for the organisation of AML/CFT colleges and to provide for a coordinated, legally sound approach, recognising the need for structured interaction between supervisors across the Union. In line with its coordinating and oversight role, AMLA should be entrusted with developing the draft regulatory technical standards defining the general conditions that enable the proper functioning of AML/CFT supervisory colleges.

(68) Exchange of information and cooperation between supervisors is essential in the context of increasingly integrated global financial systems. On the one hand, Union supervisors, including AMLA, should inform each other of instances in which the law of a third country does not permit the implementation of the policies and procedures required under Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation]*. On the other hand, Member States should be enabled to authorise supervisors to conclude cooperation agreements providing for collaboration and exchanges of confidential information with their counterparts in third countries, in compliance with applicable rules for personal data transfers. Given its oversight role, AMLA should lend assistance as may be necessary to assess the equivalence of professional secrecy requirements applicable to the third country counterpart.

(69) Directive (EU) 2015/849 allowed Member States to entrust the supervision of some obliged entities to self-regulatory bodies. However, the quality and intensity of supervision performed by such self-regulatory bodies has been insufficient, and under no or close to no public scrutiny. Where a Member State decides to entrust supervision to a self-regulatory body, it should also designate a public authority to oversee the activities of the self-regulatory body to ensure that the performance of those activities is in line with the requirements of this Directive. ***That public authority should be a public administration entity and should perform out its functions free of undue influence. The functions to be exercised by the authority overseeing self-regulatory bodies do not imply that the authority should exercise supervisory functions vis-à-vis obliged entities, nor take decisions in individual cases handled by the self-regulatory body. However, this does not prevent Member States from allocating additional tasks to that authority if they deem it necessary to achieve the objectives of this Directive. When doing so, Member States should ensure that additional tasks are in line with fundamental rights, and in particular that those tasks do not interfere with the exercise of the right of defence and the confidentiality of lawyer-client communication.***

(70) The importance of combating money laundering and terrorist financing should result in Member States laying down effective, proportionate and dissuasive **pecuniary** sanctions and **administrative** measures in national law for failure to respect the requirements of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation]. National supervisors should be empowered by Member States to impose such **administrative** measures to obliged entities to remedy the situation in the case of breaches and, where the breach so justifies, issue pecuniary sanctions. *Depending on the organisational systems in place in the Member States, such measures and sanctions may also be applied in cooperation between supervisors and other authorities, by delegation from the supervisors to other authorities or by application by the supervisors to judicial authorities.* The **pecuniary** sanctions and **administrative** measures should be sufficiently broad to allow Member States and **supervisors** to take account of the differences between obliged entities, in particular between credit institutions and financial institutions and other obliged entities, as regards their size, characteristics and the nature of the business.

(71) Member States currently have a diverse range of **pecuniary** sanctions and **administrative** measures for breaches of the key preventative provisions in place and an inconsistent approach to investigating and sanctioning violations of anti-money laundering requirements, nor is there a common understanding among supervisors as to what should constitute a "serious" violation and thus distinguish when **a pecuniary** sanction should be imposed. That diversity is detrimental to the efforts made in combating money laundering and terrorist financing and the Union's response is fragmented.

Therefore, common criteria for determining the most appropriate supervisory response to breaches should be laid down and a range of administrative measures that the supervisors could impose *to remedy breaches, whether in combination with pecuniary sanctions or*, when the breaches are not sufficiently serious to be punished with **■ a pecuniary sanction, on their own**, should be provided. In order to incentivise obliged entities to comply with the provisions of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation], it is necessary to strengthen the dissuasive nature of **■ pecuniary** sanctions. Accordingly, the minimum amount of the maximum penalty that can be imposed in case of serious breaches of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation] should be raised. In transposing this Directive, Member States should ensure that the imposition of **■ pecuniary** sanctions and *administrative* measures, and of criminal sanctions in accordance with national law, does not breach the principle of ne bis in idem.

(71a) In the case of obliged entities that are legal persons, breaches of AML/CFT requirements occur following action by, or under the responsibility of the natural persons who have the power to direct its activities, including through agents and distributors or other persons acting on behalf of the obliged entity. In order to ensure that supervisory action in response to such breaches is effective, the obliged entity should be held liable also for actions by those natural persons, whether carried out intentionally or negligently. Without prejudice to the liability of legal persons in criminal proceedings, any intent to derive a benefit for the obliged entity from breaches points to wider failures in the internal policies, procedures and controls of the obliged entities to prevent money laundering, its predicate offences and terrorist financing that undermine the obliged entity's role as gatekeeper of the Union's financial system. Any intent to derive benefit from a breach of AML/CFT requirement should therefore count against its gravity.

(71b) Member States have different systems in place for the application of pecuniary sanctions, administrative measures and periodic penalty payments. In addition, certain administrative measures that supervisors are empowered to take, such as for example the withdrawal or suspension of licence, are dependent on the execution of those measures by other authorities. In order to cater for such a diverse range of situations, it is appropriate to allow flexibility as regards the means that supervisors have to impose pecuniary sanctions, remedial measures and periodic penalty payments. Regardless of the means chosen, it is incumbent on the Member States and the authorities involved to ensure that the mechanisms implemented achieve the intended result of restoring compliance and apply effective, dissuasive and proportionate pecuniary sanctions.

(71c) With a view to ensuring that obliged entities comply with AML/CFT requirements and effectively mitigate the risks of money laundering, its predicate offences and terrorist financing to which they are exposed, supervisors should be able to impose administrative measures not only to remedy identified breaches, but also where they identify that weaknesses in the internal policies, procedures and control are likely to result in breaches of AML/CFT requirements, or where those policies, procedures and controls are inadequate to mitigate risks. The scope of administrative measures applied, and the timing granted to obliged entities to implement the requested actions, depend on the specific breaches or weaknesses identified. Where multiple breaches or weaknesses are identified, different deadlines may apply for the implementation of each individual administrative measure imposed. Consistent with the punitive and educational goal of publications, only decisions to impose administrative measures in relation to breaches of AML/CFT requirements should be published, but not administrative measures imposed to prevent such breach.

(71d) Timely compliance by obliged entities with administrative measures applied to them is essential to ensure an adequate and consistent level of protection against money laundering, its predicate offences and terrorist financing across the internal market. Where obliged entities fail to comply with administrative measures within the deadline set, it is necessary that supervisors are able to apply enhanced pressure on the obliged entity to restore compliance without delay. To that end, it should be possible for supervisors to impose periodic penalty payments as of the deadline set for restoring compliance, including with retroactive effect when the decision imposing the periodic penalty payment is taken at a later stage. In calculating the amounts of periodic penalty payments, supervisors should take into account the overall turnover of the obliged entity and the type and gravity of the breach or weakness targeted by the supervisory measure to ensure its effectiveness and proportionality. Given their goal of pressuring an obliged entity into complying with an administrative measure, periodic penalty payments should be limited in time and apply for no longer than six months. While it should be possible for supervisors to renew the imposition of periodic penalty payments for another six months maximum, alternative measures to address an extended situation of non-compliance should be considered, consistent with the wide range of administrative measures that supervisors may apply.

(71e) Where the legal system of the Member State does not allow the imposition of pecuniary sanctions provided for in this Directive by administrative means, the rules on pecuniary sanctions may be applied in such a manner that the penalty is initiated by the supervisor and imposed by judicial authorities. Therefore, it is necessary that those Member States ensure that the application of the rules and pecuniary sanctions has an effect equivalent to the pecuniary sanctions imposed by the supervisors. When imposing such pecuniary sanctions, judicial authorities should take into account the recommendation by the supervisor initiating the penalty. The penalties imposed should be effective, proportionate and dissuasive.

(72) Obligated entities can benefit from the freedom to provide services and to establish across the internal market to offer their products and services across the Union. An effective supervisory system requires that supervisors are aware of the weaknesses in obliged entities' compliance with AML/CFT rules. It is therefore important that supervisors are able to inform one another of **pecuniary** sanctions and **administrative** measures imposed on obliged entities, when such information would be relevant for other supervisors too.

(73) Publication of **a pecuniary** sanction or **administrative** measure for breach of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation] can have a strong dissuasive effect against repetition of such **a** breach. It also informs other entities of the money laundering and financing of terrorism risks associated with the sanctioned obliged entity before entering into a business relationship and assists supervisors in other Member States in relation to the risks associated with an obliged entity when it operates in their Member State on a cross-border basis. For those reasons, the requirement to publish decisions on **pecuniary** sanctions against which there is no appeal should be confirmed, **and should be extended to the publication of certain administrative measures that are imposed to remedy breaches of AML/CFT requirements and to periodic penalty payments**. However, any such publication should be proportionate and, in the taking of a decision whether to publish an administrative sanction or measure, supervisors should take into account the gravity of the breach and the dissuasive effect that the publication is likely to achieve. **To this end, Member States may decide to delay publication of administrative measures against which there is an appeal when they are applied to remedy a breach that is not serious, repeated or systematic.**

(74) **Directive (EU) 2019/1937 applies to the reporting of breaches of Directive (EU) 2015/849 relating to money laundering and terrorist financing and to the protection of persons reporting such breaches, which is referred to under Part II of the Annex of Directive (EU) 2019/1937. Since this Directive repeals Directive (EU) 2015/849, the reference under Annex II of Directive (EU) 2019/1937 to Directive (EU) 2015/849 should be understood as a reference to this Directive. At the same time, it is necessary to maintain tailored rules on the reporting of breaches of AML/CFT requirements that complement Directive (EU) 2019/1937, in particular, as regards the requirements for obliged entities to establish internal reporting channels and the identification of authorities competent to receive and follow-up on reports relating to breaches of rules relating to the prevention and fight against money laundering and terrorist financing.**

(75) The new fully-integrated and coherent anti-money laundering and counter-terrorist financing policy at Union level, with designated roles for both Union and national competent authorities and with a view to ensure their smooth and constant cooperation. In that regard, cooperation between all national and Union AML/CFT authorities is of the utmost importance and should be clarified and enhanced. Internally, it remains the duty of Member States to provide for the necessary rules to ensure that policy makers, the FIUs, supervisors, including AMLA, and other competent authorities involved in AML/CFT, as well as tax authorities and law enforcement authorities when acting within the scope of this Directive, have effective mechanisms to enable them to cooperate and coordinate, including through a restrictive approach to the refusal by competent authorities to cooperate and exchange information at the request of another competent authority.

Irrespective of the mechanisms put in place, such national cooperation should result in an effective system to prevent and combat money laundering, its predicate offences and terrorist financing, and to prevent the non-implementation and evasion of targeted financial sanctions.

(76) In order to facilitate and promote effective cooperation, and in particular the exchange of information, Member States should be required to communicate to the Commission and AMLA the list of their competent authorities and relevant contact details.

(77) The risk of money laundering and terrorist financing can be detected by all supervisors in charge of credit institutions. Information of a prudential nature relating to credit and financial institutions, such as information relating to the fitness and properness of directors and shareholders, to the internal control mechanisms, to governance or to compliance and risk management, is often indispensable for the adequate AML/CFT supervision of such institutions. Similarly, AML/CFT information is also important for the prudential supervision of such institutions.

Therefore, cooperation and exchange of information with AML/CFT supervisors and FIU should be extended to all competent authorities in charge of the supervision of those obliged entities in accordance with other Union legal instruments, such as Directive (EU) 2013/36¹⁵, Directive (EU) 2014/49¹⁶, Directive (EU) 2014/59¹⁷, Directive (EU) 2014/92¹⁸ and Directive (EU) 2015/2366 of the European Parliament and of the Council¹⁹. To ensure the effective implementation of this cooperation, Member States should inform the AMLA annually of the exchanges carried out.

(78) Cooperation with other authorities competent for supervising credit institutions under Directive (EU) 2014/92 and Directive (EU) 2015/2366 has the potential to reduce unintended consequences of AML/CFT requirements. Credit institutions may choose to terminate or restrict business relationships with customers or categories of customers in order to avoid, rather than manage, risk. Such de-risking practices may weaken the AML/CFT framework and the detection of suspicious transactions, as they push affected customers to resort to less secure or unregulated payment channels to meet their financial needs.

¹⁵ 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).

¹⁶ Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

¹⁷ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

¹⁸ 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).

¹⁹ 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).

At the same time, widespread de-risking practices in the banking sector may lead to financial exclusion for certain categories of payment entities or consumers. Financial supervisors are best placed to identify situations where a credit institution has refused to enter into a business relationship despite possibly being obliged to do so on the basis of the national law implementing Directive (EU) 2014/92 or Directive (EU) 2015/2366, and without a justification based on the documented customer due diligence. Financial supervisors should alert the authorities responsible for ensuring compliance by financial institution with Directive (EU) 2014/92 or Directive (EU) 2015/2366 when such cases arise ***or where business relationships are terminated as a result of de-risking practices.***

(79) The cooperation between financial supervisors and the authorities responsible for crisis management of credit institutions and investment firms, such as in particular Deposit Guarantee Scheme's designated authorities and resolution authorities, is necessary to reconcile the objectives to prevent money laundering under this Directive and to protect financial stability and depositors under the Directives 2014/49/EU and 2014/59/EU. Financial supervisors should ***inform the designated authorities and resolution authorities under those acts of any instance where they identify an increased likelihood of failure or the unavailability of deposits on AML/CFT grounds. Financial supervisors should also inform those authorities of any transaction, account or business relationship that has been suspended by the FIU to allow the performance of the tasks of the designated authorities and resolution authorities in cases of increased risk of failure or unavailability of deposits, irrespective of the reason for that increased risk.***

(80) To facilitate such cooperation in relation to credit *and financial* institutions, AMLA, in consultation with the European Banking Authority, should issue guidelines specifying the main elements of such cooperation including how information should be exchanged.

(81) Cooperation mechanisms should also extend to the authorities in charge of the supervision and oversight of auditors, as such cooperation can enhance the effectiveness of the Union anti-money laundering framework.

(82) The exchange of information and the provision of assistance between competent authorities of the Member States is essential for the purposes of this Directive. Consequently, Member States should not prohibit or place unreasonable or unduly restrictive conditions on this exchange of information and provision of assistance.

(83) Supervisors should be able to cooperate and exchange confidential information, regardless of their respective nature or status. To this end, they should have an adequate legal basis for exchange of confidential information and for cooperation. Exchange of information and cooperation with other authorities competent for supervising or overseeing obliged entities under other Union acts should not be hampered unintentionally by legal uncertainty which may stem from a lack of explicit provisions in this field. Clarification of the legal framework is even more important since prudential supervision has, in a number of cases, been entrusted to non-AML/CFT supervisors, such as the European Central Bank (ECB).

(83a) Information in possession of supervisors may be crucial for the performance of activities of other competent authorities. To ensure the effectiveness of the Union AML/CFT framework, Member States should authorise the exchange of information between supervisors and other competent authorities. Strict rules should apply in relation to the use of confidential information exchanged.

(84) The effectiveness of the Union AML/CFT framework relies on the cooperation between a wide array of competent authorities. To facilitate such cooperation, AMLA should be entrusted to develop guidelines in coordination with the ECB, the European Supervisory Authorities, Europol, Eurojust, and the European Public Prosecutor's Office on cooperation between all competent authorities. Such guidelines should also describe how authorities competent for the supervision or oversight of obliged entities under other Union acts should take into account money laundering and terrorist financing concerns in the performance of their duties.

(85) Regulation (EU) 2016/679 applies to the processing of personal data for the purposes of this Directive. Regulation (EU) 2018/1725 of the European Parliament and of the Council²⁰ applies to the processing of personal data by the Union institutions and bodies for the purposes of this Directive. The fight against money laundering and terrorist financing is recognised as an important public interest ground by all Member States. However, competent authorities responsible for investigating or prosecuting money laundering, its predicate offences or terrorist financing, or those which have the function of tracing, seizing or freezing and confiscating criminal assets should respect the rules pertaining to the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, including Directive (EU) 2016/680 of the European Parliament and of the Council²¹.

²⁰ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

²¹ Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

(86) It is essential that the alignment of this Directive with the revised FATF Recommendations is carried out in full compliance with Union law, in particular as regards Union data protection law, including rules on data transfers, as well as the protection of fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union (the ‘Charter’). Certain aspects of the implementation of this Directive involve the collection, analysis, storage and sharing of data within the Union and with third countries. Such processing of personal data should be permitted, while fully respecting fundamental rights, only for the purposes laid down in this Directive, and for the activities required under this Directive, such as the exchange of information among competent authorities.

(87) The rights of access to data by the data subject are applicable to the personal data processed for the purpose of this Directive. 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 and, where relevant, Article 25 of Regulation (EU) 2018/1725, 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 or, where applicable, the European Data Protection Supervisor, check 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 referred to in Article 51 of Regulation (EU) 2016/679 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.

(88) In order to ensure continued exchange of information between FIUs during the period of set-up of AMLA, the Commission should continue to host the FIU.net on a temporary basis. To ensure full involvement of FIUs in the operation of the system, the Commission should regularly exchange with the EU Financial Intelligence Units' Platform (the 'EU FIUs' Platform'), an informal group composed of representatives from FIUs and active since 2006, and used to facilitate cooperation among FIUs and exchange views on cooperation-related issues.

(89) Regulatory technical standards should ensure consistent harmonisation across the Union. As the body with highly specialised expertise in the field of AML/CFT, it is appropriate to entrust AMLA with the elaboration, for submission to the Commission, of draft regulatory technical standards which do not involve policy choices.

(90) In order to ensure consistent approaches among FIUs and among supervisors, 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 Directive by adopting *delegated acts to define indicators to classify the gravity of failures to report adequate, accurate and up-to-date information to the beneficial ownership registers as well as the regulatory technical standards specifying the relevance and selection criteria when determining whether a suspicious transaction report concerns another Member State*, setting out benchmarks and methodology for assessing and classifying the inherent and residual risk profile of obliged entities and the frequency of risk profile reviews *and the criteria as regards appointment and functions of a central contact point of certain services providers*, laying down details of duties of the home and host supervisors, and the modalities of cooperation between them, specifying the general conditions for the functioning of the AML supervisory colleges and the operational functioning of such colleges, defining indicators to classify the level of gravity of breaches of this Directive and criteria to be taken into account when setting the level of *pecuniary* sanctions or taking administrative measures *and a methodology for the application of periodic penalty payments*.

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. 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.

(91) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission in order to lay down a methodology for the collection of statistics, establish the format for the submission of beneficial ownership information ***and for the request and granting of access to beneficial ownership information on the basis of a legitimate interest***, define the technical conditions for the interconnection of beneficial ownership registers and of bank account registers and data retrieval mechanisms, ***establish the format for the submission of the information to the bank account registers and data retrieval mechanisms*** as well as to adopt implementing technical standards specifying the format to be used for the exchange of the information among FIUs of the Member States, ***common template for cooperation agreements between Union supervisors and third country counterparts***. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²².

²² 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)

(92) This Directive 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).

(92a) Equality between women and men and diversity are fundamental values of the Union, which it set out to promote across the whole range of Union actions. While progress has been made in these areas over time, more is needed to achieve balanced representation in decision-making, whether at Union or at national level. Without prejudice to the primary application of merit-based criteria, when appointing the heads of their national supervisory authorities and Financial Intelligence Units, Member States should seek to ensure gender balance, diversity and inclusion, and take into account, to the extent possible, intersections between them. Member States should strive to ensure balanced and inclusive representation also when selecting their representatives to the General Boards of AMLA.

(93) When drawing up a report evaluating the implementation of this Directive, the Commission should give due consideration to the respect of the fundamental rights and principles recognised by the Charter.

(93a) Given the need to urgently implement a harmonised approach to the access to beneficial ownership registers on the basis of the demonstration of a legitimate interest, the relevant provisions should be transposed by Member States by [2 years after the date of entry into force of this Directive]. However, since the initial period of the new regime for access on a legitimate basis will likely see a peak in demands to be processed by the entities in charge of the beneficial ownership registers, the deadlines for the granting of access should not apply for the first four months of application of the new regime. Member States should set up single access points for information on real estate registers by [2 years after the date of transposition of this Directive]. Centralised automated mechanisms allowing the identification of holders of bank, payment, crypto asset and securities accounts and safe-deposit boxes registers should also be interconnected by that date.

(94) Since the objectives of this Directive, namely the establishment of a coordinated and coherent mechanism to prevent money laundering and terrorist financing, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and the effects of the proposed 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. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(95) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents²³, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(96) The European Data Protection Supervisor has been consulted in accordance with Article 42 of Regulation (EU) 2018/1725 [and delivered an opinion on ...²⁴].

(97) Directive (EU) 2015/849 should therefore be repealed,

HAVE ADOPTED THIS DIRECTIVE:

²³ OJ C 369, 17.12.2011, p. 14.

²⁴ OJ C , , p. .

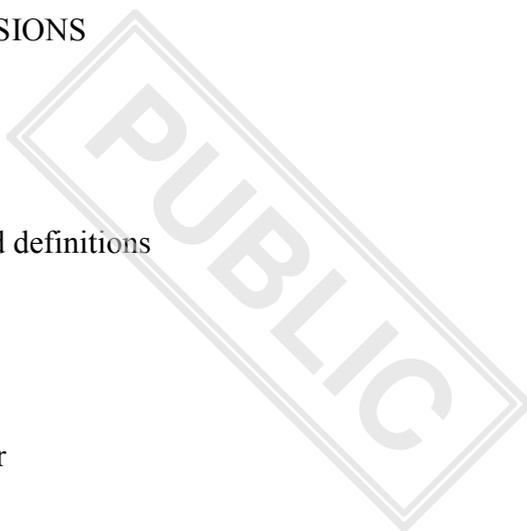
CHAPTER I
GENERAL PROVISIONS

Section 1

Subject matter, scope and definitions

Article 1

Subject matter



This Directive lays down rules concerning:

- (a) measures applicable to sectors exposed to money laundering and terrorist financing at national level;
- (aa) requirements in relation to registration, identification of and checks on senior management and beneficial owners of obliged entities;***
- (b) the identification of money laundering and terrorist financing risks at Union and Member States level;
- (c) the set-up and access to **beneficial ownership** **and** bank account **registers and access to** **real estate** **information**;
- (d) the responsibilities and tasks of Financial Intelligence Units (FIUs);
- (e) the responsibilities and tasks of bodies involved in the supervision of obliged entities,
- (f) cooperation between competent authorities and cooperation with authorities covered by other Union acts.

Article 2

Definitions

For the purposes of this Directive, the definitions set out in Article 2 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] apply.

The following definitions also apply:

(1) ‘financial supervisor’ means a supervisor in charge of credit and financial institutions;

(1a) ‘non-financial supervisor’ means a supervisor in charge of the non-financial sector;

(1b) ‘non-financial sector’ means the obliged entities listed in Article 3 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], other than credit and financial institutions.

(2) ‘obliged entities’ means the natural or legal persons listed in Article 3 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] that are not exempted in accordance with article **4, 4a, 5, 6** of that Regulation;

(3) ‘home Member State’ means the Member State where the registered office of the obliged entity is situated or, if the obliged entity has no registered office, the Member State in which its head office is situated;

(4) ‘host Member State’ means the Member State other than the home Member State in which the obliged entity **operates an establishment, such as** a subsidiary or a branch, **or where the entity operates under the freedom to provide** services **through an infrastructure.**

(5) ‘customs authorities’ means the customs authorities as defined in Article 5(1) of Regulation (EU) 952/2013 of the European Parliament and of the Council²⁵ and the competent authorities as defined in Article 2(1), point (g), of Regulation (EU) 2018/1672 of the European Parliament and of the Council²⁶;

(6) ‘anti-money laundering/counter-terrorist financing supervisory college’ or ‘AML/CFT supervisory college’ means a permanent structure for cooperation and information sharing for the purposes of supervising a group or an entity **that operates establishments in another Member State or third country, or that operates in other Member States under the freedom to provide services through an infrastructure;**

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²⁵ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

²⁶ 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).

(8b) ‘draft national measure’ means the text of an act, whichever its form, which, once enacted, will have legal effect, the text being at a stage of preparation at which substantial amendments can still be made;

(8c) ‘securities account’ means a securities account as defined in Article 2(1), point (28), of Regulation (EU) No 909/2014 of the European Parliament and of the Council²⁷;

(8d) ‘securities’ means financial instruments as defined in Article 4(1), point (15), of Directive 2014/65/EU of the European Parliament and of the Council²⁸.

■

Section 2

National measures in sectors exposed to money laundering and terrorist financing

²⁷ *Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (Text with EEA relevance), OJ L 257, 28.8.2014, p. 1–72.*

²⁸ *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) (Text with EEA relevance), OJ L 173, 12.6.2014, p. 349–496.*

Article 3

Identification of exposed sectors at national level

1. Where **a Member State** identifies that, in addition to obliged entities, entities in other sectors are exposed to money laundering and terrorist financing risks, **it** may decide to apply *all or part of* the requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* to those additional entities.
2. For the purposes of paragraph 1, Member States shall notify to the Commission their intention to apply *all or part of* requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* to entities in additional sectors, accompanied by:
 - (a) a justification of the money laundering and terrorist financing risks underpinning such intention;
 - (b) an assessment of the impact that such extension will have on the provision of services within the internal market;

(ba) a description of the requirements of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] that the Member State intends to apply to those entities;

(c) the text of the *draft* national measures, *including the update thereof provided* that the Member State **■** *has significantly altered the scope, content or implementation of those notified measures.*

3. Member States shall suspend the adoption of national measures referred to in paragraph 2, point (c), for 6 months from the date of the notification referred to in paragraph 2.

The suspension referred to in the first subparagraph shall not apply in cases where the national measure aims at addressing a serious and present money laundering or terrorist financing threat. In this case, the notification referred to in paragraph 2 shall also include a justification as to why the Member State will not suspend the adoption of the national measure in line with the first subparagraph.

4. Before the end of the period referred to in paragraph 3, the Commission, having consulted the Authority for anti-money laundering and countering the financing of terrorism established by Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final] (AMLA), shall issue a detailed opinion regarding whether the measure envisaged:

- (a) is adequate to address the risks identified, in particular as regards whether the risks identified by the Member State concern the internal market;
- (b) may create obstacles to the free movement of services or capital or to the freedom of establishment of service operators within the internal market which are not proportionate to the money laundering and terrorist financing risks the measure aims to mitigate.

The detailed opinion shall also indicate whether the Commission intends to propose action at Union level.

5. Where the Commission does not consider it appropriate to propose action at Union level, the Member State concerned shall, within two months of receiving the detailed opinion referred to in paragraph 4, report to the Commission on the action it proposes to take on that detailed opinion. The Commission shall comment on the action proposed by the Member State.

6. Where the Commission indicates its intention to propose action at Union level, the Member State concerned shall abstain from adopting the national measures referred to in paragraph 2, point (c), ***unless those national measures aim at addressing a serious and present ML or TF threat.***

7. Where, on ***[please insert the date of entry into force of this Directive]*** , Member States have already applied national provisions transposing Directive (EU) 2015/849 to other sectors than obliged entities, they may apply ***all or part of*** the requirements of Regulation ***[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*** to those sectors.

By [6 months after the date of transposition of this Directive], Member States shall notify the Commission the sectors identified at national level pursuant to the first sub-paragraph to which the requirements of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] shall apply, accompanied by a justification of the exposure of those sectors to money laundering and terrorist financing risks. Within 6 months of such notification, the Commission having consulted AMLA, shall issue a detailed opinion covering paragraph 4, points (a) and (b), and indicating whether it intends to propose action at Union level. Where the Commission does not consider it appropriate to propose action at Union level, paragraph 5 shall apply.

8. By *[1 year after the date of transposition of this Directive]* and every year thereafter, the Commission shall publish a consolidated list of the sectors to which Member States have decided to apply *all or part of* the requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* in the *Official Journal of the European Union*.

Article 4

Requirements relating to certain service providers

1. Member States shall ensure that currency exchange and cheque cashing offices, and trust or company service providers are either licensed or registered.
2. Member States shall ensure that all providers of gambling services are regulated.

3. Member States shall ensure that other obliged entities are subject to a minimum level of registration that enables their identification by supervisors.

The first subparagraph shall not apply where obliged entities are already subject to licensing or registration requirements under other Union acts, or to national rules regulating access to the profession or subjecting it to licensing or registration requirements which allow the identification of the obliged entities by supervisors.

Article 4a

Requirements relating to the granting of residence rights in exchange for investment

1. Member States whose national law enables the granting of residence rights in exchange for any kind of investment, such as 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, shall put in place at least the following measures to mitigate the associated risks of money laundering, its predicate offences or terrorist financing:

(a) a risk management process, including the identification, classification and mitigation of risks under the coordination of a national designated authority. Member States shall ensure monitoring of implementation of the risk management process, including by assessing it on an annual basis;

(b) measures providing for the mitigation of risks of money laundering, its predicate offences or terrorist financing associated with applicants for the granting of residence rights in exchange for investment including:

(i) checks on the profile of the applicant by the national designated authority, including obtaining information on the source of funds and source of wealth of the applicant;

(ii) verification of information on applicants against information held by competent authorities referred to in Article 2(31), points (a) and (c) of [reference to the AML Regulation] subject to the respect of the applicable national criminal procedural law and against lists of individuals and entities subject to EU restrictive measures.

(iii) periodic reviews of medium and high-risk applicants.

2. Member States shall adopt and implement the measures referred to in paragraph 1 in a manner consistent with the risks identified under the risk assessment carried out pursuant to Article 8 this Directive.

3. Member States shall publish an annual report on the risks of money laundering, its predicate offences or terrorist financing associated with the granting of residence rights in exchange for investment. Those reports shall be publicly available and shall include at least:

(a) information on the number of received applications and of countries of origin of the applicants;

(b) information on the number of residence permits granted and rejected and the reasons for the rejections;

(c) information on any evolution detected in the risks of money laundering, its predicate offences and terrorist financing associated with the granting of residence rights in exchange for investment.

4. By [4 years after the date of entry into force of this Directive] Member States shall notify to the Commission the measures adopted under paragraph 1. The notification shall include a justification based on the relevant risk assessment carried out by the Member States pursuant to Article 8 of this Directive.

5. The Commission shall publish in the Official Journal of the European Union the measures notified by Member States pursuant to paragraph 4.

6. By [6 years after the entry into force of this Directive], the Commission shall publish a report assessing the measures notified under paragraph 1 in mitigating the risks of money laundering, its predicate offences and terrorist financing and, where necessary, issue recommendations.

I

Article 6

Checks on the senior management and beneficial owners of certain obliged entities

1. Member States shall require supervisors to verify that the members of the senior management in the obliged entities referred to in Article 4(1) and (2), and the beneficial owners of such entities **are of good repute and** act with honesty and integrity. Senior management of such entities **shall** also possess knowledge and expertise necessary to carry out their functions.
2. With respect to the obliged entities referred to in Article 3, points (3)(a), (b), (d), (e) and (h) to **(lc)**, of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*, Member States shall ensure that supervisors take the necessary measures to prevent persons convicted of money laundering, **relevant** predicate offences or terrorist financing or their associates from being professionally accredited, holding a **senior** management function in or being the beneficial owners of those obliged entities.
3. Member States shall ensure that supervisors verify **on a risk-sensitive basis** whether the requirements of paragraphs 1 and 2 continue to be met. In particular, they shall verify whether the senior management **of obliged entities referred to in paragraph 1 is of good repute**, acts with honesty and integrity and possesses knowledge and expertise necessary to carry out their functions in cases where there are reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof in an obliged entity **on a risk-sensitive basis**.

4. **Member States** shall *ensure that supervisors* have the power to request the removal of any person convicted of money laundering, **relevant** predicate offences or terrorist financing from the *senior* management role of the obliged entities referred to in paragraphs 1 and 2. **Member States** shall *ensure that supervisors* have the power to remove *or impose a temporary ban on* members of the senior management *of the obliged entities referred to in paragraph 1* that are not deemed to act with honesty and integrity, *be of good repute* and possess knowledge and expertise necessary to carry out their functions.

5. Where the person convicted of money laundering, **relevant** predicate offences or terrorist financing is the beneficial owner of an obliged entity referred to in paragraph 2, Member States shall ensure that **supervisors have the power to disassociate such persons** from any obliged entity, including by granting supervisors the power to request the divestment of the holding by the beneficial owner in an obliged entity.

6. For the purposes of this Article, Member States shall ensure that, in accordance with their national law, supervisors or any other authority competent at national level for assessing the **requirements applicable to** persons referred to in paragraphs 1 and 2, check the *Central AML/CFT database under Article 11 of Regulation [AMLA Regulation]* and existence of a relevant conviction in the criminal record of the person concerned. Any exchange of information for those purposes shall be carried out in accordance with Framework Decision 2009/315/JHA and Decision 2009/316/JHA as implemented in national law.

6a. Member States shall ensure that decisions taken by supervisors pursuant to this Article can be subject to effective remedial procedures, including judicial remedy.

6b. By ... [two years after the date of transposition of this Directive], AMLA shall issue guidelines on:

(a) the notions of good repute, honesty and integrity as referred to in paragraph 1;

(b) the notions of knowledge and expertise as referred to in paragraph 1.

(c) the consistent application by supervisors of the power entrusted on them under this Article.

When drawing up the guidelines referred to in the first subparagraph of this paragraph, AMLA shall take into account the specificities of each sector in which the obliged entities operate.

I

Section 2

Risk assessments

Article 7

Supra-national risk assessment

1. The Commission shall conduct an assessment of the risks of money laundering and terrorist financing *and of non-implementation and evasion of targeted financial sanctions* affecting the internal market and relating to cross-border activities.

1a. The report referred to in the first subparagraph shall be made public, except for those parts which contain classified information.

To that end, the Commission shall, **by four** years after the **entry into force** of this Directive, draw up a report identifying, analysing and evaluating those risks at Union level. Thereafter, the Commission shall update its report every four years. The Commission may update parts of the report more frequently, if appropriate.

When, in the process of updating the report, the Commission identifies new risks, it may recommend to Member States to consider updating their national risk assessments or carry out sectoral risk assessments pursuant to article 8 in order to assess those risks.

2. The report referred to in paragraph 1 shall cover at least the following:

- (a) the areas and sectors of the internal market that are exposed to money laundering and terrorist financing risks;

- (b) the nature and level of the risks associated with each area and sector;
- (c) the most widespread means used to launder illicit proceeds, including, where available, those particularly used in transactions between Member States and third countries, independently of the identification of a third country pursuant to Section 2 of Chapter III of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final];

(ca) an assessment of the risks of money laundering and terrorist financing associated with legal persons and legal arrangements, including the exposure to risks deriving from foreign legal persons and legal arrangements;

- (d) the risks of non-implementation and evasion of ■ targeted financial sanctions.

3. The Commission shall make recommendations to Member States on the measures suitable for addressing the identified risks. In the event that Member States decide not to apply any of the recommendations in their national AML/CFT regimes, they shall notify the Commission thereof and provide a ***detailed*** justification ***stating reasons*** for such a decision.

4. By [3 years after the date of transposition of this Directive], AMLA, ***in accordance with article 44 of Regulation [please insert reference to AMLA Regulation - 2021/0240(COD)]***, shall issue an opinion addressed to the Commission on the risks of money laundering and terrorist financing affecting the Union. Thereafter, AMLA shall issue an opinion every two years. ***AMLA may issue opinions or updates of its previous opinions more frequently, where it deems it appropriate to do so. The opinions issued by AMLA shall be made public, except for those parts which contain classified information.***

5. In conducting the assessment referred to in paragraph 1, the Commission shall organise the work at Union level, shall take into account the opinions referred to in paragraph 4 and shall involve the Member States' experts in the area of AML/CFT, representatives from national supervisory authorities and FIUs, AMLA and other Union level bodies, **and other relevant stakeholders**, where appropriate .

6. Within **two** years of the adoption of the report referred to in paragraph 1, and every four years thereafter, the Commission shall submit a report to the European Parliament and to the Council on the actions taken based on the findings of that report .

Article 8

National risk assessment

1. Each Member State shall carry out a national risk assessment to identify, assess, understand and mitigate the risks of money laundering and terrorist financing, **and the risks of non-implementation and evasion of targeted financial sanctions** affecting it. It shall keep that risk assessment up to date and review it at least every four years.

Where Member States consider that the risk situation so requires, they may review the risk assessment more frequently or conduct ad hoc sectoral risk assessments.

Each Member State shall also take appropriate steps to identify, assess, understand and mitigate the risks of non-implementation and evasion of targeted financial sanctions.

2. Each Member State shall designate an authority or establish a mechanism to coordinate the national response to the risks referred to in paragraph 1. The identity of that authority or the description of the mechanism shall be notified to the Commission **■**. ***The Commission shall publish the list of the designated authorities or established mechanism in the Official Journal.***

3. In carrying out the national risk assessments referred to in paragraph 1 of this Article, Member States shall take into account the report referred to in Article 7(1), ***including sectors and products covered and the findings of that report.***

4. Each Member State shall use the national risk assessment to:

(a) improve its AML/CFT regime, in particular by identifying any areas where obliged entities are to apply enhanced measures ***in line with a risk-based approach*** and, where appropriate, specifying the measures to be taken;

(b) identify, where appropriate, sectors or areas of lower or greater risk of money laundering and terrorist financing;

(c) assess the risks of money laundering and terrorist financing associated with each type of legal person ***established in their territory and each type of*** **■** legal arrangement ***which is governed under their law, or which is administered in their territory or whose trustees or persons holding equivalent positions in similar legal arrangements reside in their territory,*** and have an understanding of the exposure to risks deriving from foreign legal persons and legal arrangements;

■

- (d) decide on the allocation and prioritisation of resources to combat money laundering and terrorist financing as well as non-implementation and evasion of █ targeted financial sanctions;
- (e) ensure that appropriate rules are drawn up for each sector or area, in accordance with the risks of money laundering and terrorist financing;
- (f) make appropriate information available promptly to competent authorities and to obliged entities to facilitate the carrying out of their own money laundering and terrorist financing risk assessments as well as the assessment of risks of evasion of █ targeted financial sanctions referred to in Article 8 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final].

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In the national risk assessment, Member States shall describe the institutional structure and broad procedures of their AML/CFT regime, including, inter alia, the FIU, tax authorities and prosecutors, *the mechanisms for cooperation with counterparts within the EU or in third countries*, as well as the allocated human and financial resources to the extent that this information is available.

4a. Member States shall ensure appropriate participation of competent authorities and relevant stakeholders when carrying out their national risk assessment.

5. Member States shall make the results of their national risk assessments, including their updates *and reviews*, available to the Commission, to AMLA and to the other Member States. Any Member State may provide relevant additional information, where appropriate, to the Member State carrying out the national risk assessment. A summary of the *findings of the* assessment shall be made publicly available. That summary shall not contain classified information. The information contained therein shall not permit the identification of any natural **person nor name any** legal person.

Article 9

Statistics

1. Member States shall maintain comprehensive statistics on matters relevant to the effectiveness of their AML/CFT frameworks in order to review the effectiveness of those frameworks.
2. The statistics referred to in paragraph 1 shall include:
 - (a) data measuring the size and importance of the different sectors which fall within the scope of this Directive, including the number of natural persons and entities and the economic importance of each sector;

- (b) data measuring the reporting, investigation and judicial phases of the national AML/CFT regime, including the number of suspicious transaction reports made to the FIU, the follow-up given to those reports, the information on cross-border physical transfers of cash **transmitted** to the FIU in accordance with Article 9 of Regulation (EU) 2018/1672 together with the follow-up given to the information submitted and, on an annual basis, the number of cases investigated, the number of persons prosecuted, the number of persons convicted for money laundering or terrorist financing offences, the types of predicate offences identified in accordance with Article 2 of Directive (EU) 2018/1673 of the European Parliament and of the Council²⁹ where such information is available, and the value in euro of property that has been frozen, seized or confiscated;
- (c) **the number and percentage of reports resulting in dissemination to other competent authorities and, if available**, the number and percentage of reports resulting in further investigation, together with the annual report drawn up by FIUs pursuant to Article 21;
- (d) data regarding the number of cross-border requests for information that were made, received, refused and partially or fully answered by the FIU, broken down by counterpart country;

²⁹ 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).

- (e) the number of mutual legal assistance or other international requests for information relating to beneficial ownership and bank account information as referred to in Chapter IV of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] and Sections 1 and 2 of Chapter II of this Directive received from or made to counterparts outside the Union, broken down by competent authority and counterpart country;
- (f) human resources allocated to supervisors as well as human resources allocated to the FIU to fulfil the tasks specified in Article 17;
- (g) the number of on-site and off-site supervisory actions, the number of breaches identified on the basis of supervisory actions and sanctions or administrative measures applied by supervisory authorities and self-regulatory bodies pursuant to Section 4 of Chapter IV;
- (h) the number and type of breaches identified in relation to the obligations of Chapter IV of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] and sanctions or administrative measures applied in relation to those breaches, *the number of discrepancies reported to the central register referred to in Article 10*, as well as the number of inspections carried out by the entity in charge of the central register *or on its behalf* pursuant to Article 10(8) of this Directive.

■

(hb) the following information regarding the implementation of Article 12:

(i) the number of requests to access beneficial ownership on the basis of the categories laid down in Article [12(2)]

(ii) the percentage of requests for access to information which is refused under each category laid down in Article [12(2a)]

(iii) a summary of the categories of persons granted access to beneficial ownership information under Article [12(2a), second subparagraph] ;

(hc) the number of searches of bank account registers or data retrieval mechanisms made by competent authorities, broken down by category of competent authority, and the number of searches of the interconnection of bank account registers made by FIUs;

(hd) the following data regarding implementation of targeted financial sanctions:

(i) the value of funds or other assets frozen, broken down by type;

(ii) human resources allocated to authorities competent for implementation and enforcement of targeted financial sanctions.

3. Member States shall ensure that the statistics referred to in paragraph 2 are collected and transmitted to the Commission on an annual basis. The statistics referred to in paragraph 2, points (a), (c), (d) and (f), shall also be transmitted to AMLA.

AMLA shall store those statistics in its database in accordance with Article 11 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].

4. By [**two** years after the date of transposition of this Directive], AMLA shall adopt an opinion addressed to the Commission on the methodology for the collection of the statistics referred to in paragraph 2, points (a), (c), (d), **(f) and (g)** .

5. The Commission is empowered to adopt implementing acts laying down the methodology for the collection of the statistics referred to in paragraph 2 and the arrangements for their transmission to the Commission and AMLA. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2).

6. **By... [three years after the date of transposition of this directive] and every two years thereafter**, the Commission shall publish a report summarising and explaining the statistics referred to in paragraph 2, **and make it** available on its website.

CHAPTER II

REGISTERS

Section I

Beneficial ownership registers

Article 10

Beneficial ownership registers

1. Member States shall ensure that beneficial ownership information referred to in Article 44 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], ***the statement pursuant to Article 45(3) of that Regulation*** and information on nominee arrangements referred to in Article 47 of that Regulation is held in a central register in the Member State where the legal entity is incorporated or where the trustee ***of an express trust*** or person holding an equivalent position in a similar legal arrangement is established or resides, ***or from where the legal arrangement is administered***. Such requirement shall not apply to **legal entities or legal arrangements referred to in Article 46a of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]**.

The beneficial ownership information contained in the central registers shall be available in machine-readable format and be collected in accordance with the implementing acts referred to in paragraph 4.

1a. By way of derogation from the first subparagraph, Member States shall ensure that beneficial ownership information referred to in Article 44 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] of foreign legal entities and legal arrangements referred to in Article 48 of that Regulation is held in a central register in the Member State in accordance with the conditions of that Article. Member States shall also ensure that the central register contains an indication of which situation listed in paragraph 1 of that Article triggers the registration of the foreign legal entity or foreign legal arrangement.

1b. Where the trustees of an express trust or persons holding equivalent positions in a similar legal arrangement are established or reside in different Member States a certificate of proof of registration or an excerpt of the beneficial ownership information held in a register by one Member State shall be considered as sufficient to consider the registration obligation fulfilled.

■

2. ■ Member States shall ensure that the entities in charge of the ■ central registers are empowered to request from corporate and legal entities, trustees of any express trust and persons holding an equivalent position in a similar legal ■ arrangement, and their legal ■ and beneficial owners, any information necessary to identify and verify their beneficial owners, including resolutions of the board of directors and minutes of their meetings, partnership agreements, trust deeds, power of attorney or other contractual agreements and documentation.

■

3. Where no person is identified as beneficial owner pursuant to Article 45(2) and (3) of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*, the central register shall include:

(a) a statement **█** that there is no beneficial owner or that the beneficial owner(s) could not be identified and verified, *accompanied by a justification pursuant to Article 45(3), point (a) and Article 46(4b), point (a), of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*;

█

(b) the details of **█ all natural █ persons** who hold the position of senior managing official(s) in the corporate or *other* legal entity equivalent to the information required under Article 44(1), point (a), of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*.

Member States shall ensure that the information referred to in the first subparagraph, point (a) is available to competent authorities as well as AMLA when acting in accordance with Article 25 of this Directive and Article 33 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final], self-regulatory bodies and obliged entities. However, obliged entities shall only have access to the statement submitted by the legal entity or legal arrangement, unless they report a discrepancy pursuant to Article 16a of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] or provide proof of the steps they have taken to determine the beneficial owner(s) of the legal entity or legal arrangement, in which case they shall be able to access the justification as well.

4. *By ... [one year after the date of entry into force of this Directive] the Commission shall* adopt, by means of implementing acts, the format for the submission of beneficial ownership information *as referred to in article 44 of Regulation ... [please insert reference to the Anti-Money Laundering Regulation - 2021/0239(COD)]* to the central register, *including a checklist of minimum requirements for the information to be examined by the registrant*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2).

5. Member States shall **ensure** that the beneficial ownership information held in the central registers is adequate, accurate and up-to-date, *and shall put in place mechanisms to that effect*. For that purpose, Member **States** shall apply at least the following requirements:

(a) entities in charge of the central registers shall verify, within a reasonable time upon submission of the beneficial ownership information and on a regular basis thereafter, that such information is adequate, accurate and up to date. The extent and frequency of that verification shall be commensurate to the risks associated with the categories of legal persons and legal arrangements identified pursuant to Articles 7(2), point (ca) and 8(4), point (c).

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(b) competent authorities, if appropriate and to the extent that this requirement does not interfere unnecessarily with their functions, shall report to the entity in charge of the central registers any discrepancies they find between the information available in the central registers and the information available to them.

(ba) Member States shall ensure that the entities in charge of the central registers verify whether beneficial ownership information held in those registers concerns persons or entities designated in relation to targeted financial sanctions. Such verification shall take place immediately upon a designation in relation to targeted financial sanctions and at regular intervals.

Member States shall ensure that the information on beneficial ownership on legal entities and legal arrangements recorded in the central registers includes an indication that the legal entity is associated with persons or entities subject to targeted financial sanctions in any of the following situations:

(a) a legal entity or legal arrangement is subject to targeted financial sanctions;

(b) a legal entity or legal arrangement is controlled by a person or entity subject to targeted financial sanctions;

(c) a beneficial owner of a legal entity or legal arrangement is subject to targeted financial sanctions.

The indication referred to in the first subparagraph shall be visible to any person or entity granted access pursuant to Articles 11 and 12, and shall remain in place until the targeted financial sanctions are lifted.

(bb) By ... [four years after the date of entry into force of this Directive] the Commission shall issue recommendations on the methods and procedures to be used by entities in charge of central registers to verify beneficial ownership information and by obliged entities and competent authorities to identify and report discrepancies regarding beneficial ownership information.

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7. Member States shall ensure that the **█ entities** in charge of the central registers **█ take, within 30 working days after the reporting of a discrepancy**, appropriate actions to cease the discrepancies **reported by competent authorities or by obliged entities pursuant to Article 16a of the Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]**, including amending the information included in the central registers where the entity is able to identify and verify the beneficial ownership information. A specific mention of the fact that there are discrepancies reported shall be included in the central registers **until the discrepancy is resolved and be █ visible █ to any person or entity granted access under Articles 11 and 12.**

Where the discrepancy is of a complex nature and the entities in charge of the registers cannot cease it within 30 working days, they shall record the instance as well as the steps taken, and take any necessary measure to cease the discrepancy as soon as possible.

8. **█** Member States shall ensure that the entity in charge of the central beneficial ownership register is empowered, **whether directly or by application to another authority**, to carry out checks, including on-site investigations at the premises or registered office of **█ legal █ entities**, in order to establish the current beneficial ownership of the entity **█** and to verify that the information submitted to the central register is accurate, adequate and up-to-date. The right of the central register to verify **█ beneficial ownership** information shall not be restricted, obstructed or precluded.

Where the trustee or person holding an equivalent position is an obliged entity referred to in in Article 3, point (a), (b) or (c) of Regulation [please insert reference to Anti-Money Laundering Regulation - 2021/0239(COD)] Member States shall ensure that the entity in charge of the central beneficial ownership register is also empowered to carry out checks, including on-site investigations, at the business premises or registered office of the trustee or person in an equivalent position. Those inspections shall respect at a minimum the following safeguards:

(a) with respect to natural persons, where the business premises are the same as the natural person's private residence, the on-site inspection shall be subject to prior judicial authorisation;

(b) any procedural safeguard in place in the Member State to protect the legal privilege shall be respected, and in any case no information protected by the legal privilege shall be accessed.

Member States shall ensure that the central registers are empowered to request information from other registers, including in third countries, to the strict extent that that information is necessary for the performance of their functions.

8a. Member States shall ensure that entities in charge of central registers have at their disposal necessary automated mechanisms to carry out verifications as referred to in paragraphs 5 point (a) and (ba), including against information held by other sources.

8b. Member States shall ensure that where a verification as referred to in paragraph 5 (a) is carried out at the time of submission of beneficial ownership information, and it leads an entity in charge of a central register to conclude that there are inconsistencies or errors in the beneficial ownership information, that entity in charge of a central register is able to withhold or refuse the issuance of a valid certificate of proof of registration.

8c. Member States shall ensure that where a verification as referred to in paragraph 5 (a) is carried out after the submission of beneficial ownership information, and it leads an entity in charge of a central register to conclude that the information is no longer adequate, accurate, and up-to-date, the entity in charge of the register is able to suspend the validity of the certification of proof of registration until the beneficial owner information provided is in order, except where the discrepancies 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.

9. Member States shall ensure that the entity in charge of the central register is empowered to impose, *whether directly or by application to another authority, including judicial authorities*, effective, proportionate and dissuasive measures or sanctions for failures, *including of a repeated nature*, to provide the register with accurate, adequate and up-to-date information about their beneficial ownership.

9a. The Commission is empowered to supplement this Directive by adopting a delegated act in accordance with Article 53a to define indicators to classify the level of gravity of failures to report adequate, accurate and up-to-date information to the beneficial ownership registers, including in cases of repeated failures.

10. Member States shall ensure that if, in the course of the checks carried out pursuant to this Article, or in any other way, the entities in charge of the beneficial ownership registers discover facts that could be related to money laundering or to terrorist financing, they shall promptly inform the FIU.

10a. Member States shall ensure that, in the performance of their tasks, the entities in charge of central registers carry out their functions free of undue influence and implement standards addressing conflicts of interest and strict confidentiality for their employees.

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11. The central registers shall be interconnected via the European Central Platform established by Article 22(1) of Directive (EU) 2017/1132.

11a. Member States shall ensure that the information contained in the registers includes any change to the beneficial ownership of legal persons and legal arrangements and to nominee arrangements following their first recording in the register.

12. The information referred to in paragraph 1 shall be available through the national registers and through the system of interconnection of central beneficial ownership registers for **■** five years **■** after the corporate or other legal entity has been struck off from the register. ***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 in concrete cases for a further maximum period of five years where the necessity and proportionality of such further retention have been established by the authorities competent for the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing in accordance with applicable rules.***

Upon expiry of that retention period, Member States shall ensure that the registers delete personal data.

12a. The European Commission shall, within 4 years of the date of application of this Directive, publish a report including the following:

- (a) an assessment of the effectiveness of the measures taken by the entities in charge of the registers to ensure that they have adequate, up-to-date and accurate information;*
- (aa) a description of the main types of discrepancies identified by obliged entities and competent authorities in relation to the beneficial ownership information held in the registers;*
- (b) best practices and, where appropriate, recommendations with regard to the measures taken by the entities in charge of the registers to ensure that those registers hold adequate, accurate and up-to-date information;*
- (c) overview of the features of each central register put in place by Member States, including information on mechanisms to ensure that beneficial ownership information held in the registers is kept accurate, adequate and up to date;*
- (d) an assessment of the proportionality of the fees imposed for accessing information held in the registers.*

Article 11

General rules regarding access to beneficial ownership registers by competent authorities, self-regulatory bodies and obliged entities

1. Member States shall ensure that competent authorities have **immediate, unfiltered, direct** and free access to the information held in the interconnected central registers referred to in Article 10, without alerting the entity or arrangement concerned.
2. Access *as described in paragraph 1* to the central registers referred to in Article 10 shall be granted to:

(a) competent authorities;

(b) self-regulatory bodies in the performance of supervisory functions pursuant to *Article 29;*

(c) tax authorities ;

(d) national authorities with designated responsibilities for **the implementation of EU restrictive measures identified under the relevant Council Regulations adopted on the basis of Article 215 of the Treaty on the Functioning of the European Union;**

(e) AMLA for the purposes of joint analyses pursuant to Article 25 of this Directive and Article 33 of [AMLAR];

(f) the European Public Prosecutor's Office;

(g) the European Anti-Fraud Office (OLAF);

(h) Europol and Eurojust when providing operational support to the [] competent authorities of the Member States.

3. Member States shall ensure that, when taking customer due diligence measures in accordance with Chapter III of Regulation [*please insert reference – proposal for Anti-Money Laundering Regulation* []], obliged entities have timely access to the information held in the interconnected central registers referred to in Article 10.

3a. Member States may choose to make beneficial ownership information held in their central registers available to obliged entities on the condition of the payment of a fee, which shall be limited to what is strictly necessary to cover the costs of ensuring the quality of the information held by the registers and of making the information available. Those fees shall be established in such a way as not to undermine the effective access to the information held in the registers.

4. By [**3 months after the date of transposition of this Directive**], Member States shall notify to the Commission the list of competent authorities and self-regulatory bodies and the categories of obliged entities that were granted access to the registers and the type of information available to obliged entities. Member States shall update such notification when changes to the list of competent authorities or categories of obliged entities or to the extent of access granted to obliged entities occur. The Commission shall make the information on the access by competent authorities and obliged entities, including any change to it, available to the other Member States.

Article 12

Specific access rules to beneficial ownership registers for **persons with legitimate interest**

1. Member States shall ensure that any **natural or legal person that can demonstrate a legitimate interest in relation to the prevention and combating of money laundering, its predicate offences and terrorist financing** has access to the following information **on beneficial owners of legal entities and legal arrangements** held in the interconnected central registers referred to in Article 10, **without alerting the entity or arrangement concerned**:

(a) the name ;

(b) the month and year of birth ;

(c) the country of residence and nationality *or nationalities* of the beneficial owner;

(d) *for beneficial owners of legal entities*, the nature and extent of the beneficial interest held;

(e) *for beneficial owners of express trusts or similar legal arrangements, the nature of their beneficial ownership.*

■

In addition to the information ■ *referred to* in the first subparagraph, ■ Member States ■ *shall ensure that any natural or legal persons referred to in points (a), (b) and (e) of paragraph 2 has also access to* ■ *the following* information:

(a) *historical data on the beneficial ownership information* ■ of the ■ *legal entity or arrangement, including of legal entities or legal arrangements that have been dissolved or ceased to exist in the preceding five years;*

(b) *a description of the control or ownership structure.*

Access pursuant to this paragraph shall be granted through electronic means. However, Member States shall ensure that persons who can demonstrate a legitimate interest are also able to access the information in other formats if they are unable to use electronic means.

2. ■ The following natural or legal persons shall be deemed to have a legitimate interest to access the information listed in paragraph 1:

(a) persons acting for the purpose of journalism, reporting or any other form of expression in the media that are connected with, the prevention or combating of money laundering, its predicate offences or terrorist financing;

(b) civil society organisations, including non-governmental organisations and academia, that are connected with the prevention and combating of money laundering, its predicate offences and terrorist financing;

(c) natural or legal persons likely to enter into a transaction with a legal entity or legal arrangement and who wish to prevent any link between such a transaction and money laundering, its predicate offences and terrorist financing;

(d) entities subject to AML/CFT requirements in third countries, provided they can demonstrate the need to access the information ■ referred to in paragraph 1 in relation to a legal entity or arrangement to perform customer due diligence in respect of a customer or prospective customer pursuant to AML/CFT requirements in those third countries;

(e) third country counterparts of Union AML/CFT competent authorities provided they can demonstrate the need to access the information referred to in paragraph 1 in relation to a legal entity or arrangement to perform their tasks under the AML/CFT frameworks of those third countries in the context of a specific case;

(f) Member States' authorities in charge of implementing Title I, Chapters II and III of Directive (EU) 2017/1132 of the European Parliament and of the Council³⁰, in particular the authorities in charge of the registration of companies in the register referred to in Article 16 of that Directive, and Member States' authorities responsible for scrutinising the legality of conversions, mergers and divisions of limited liability companies pursuant to Title II of that Directive;

(g) programme authorities identified by Member States pursuant to Article 71 of Regulation (EU) 2021/1060 of the European Parliament and of the Council, in respect of beneficiaries of Union funds;

(h) public authorities implementing the Recovery and Resilience Facility under Regulation (EU) 2021/241 of the European Parliament and of the Council, in respect of beneficiaries under the Facility;

³⁰ **Directive (EU) 2017/1132** 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)**14 June 2017 relating to certain aspects of company law (codification) (Text with EEA relevance), OJ L 169 30.6.2017, p. 46.**

(i) Member States' public authorities in the context of public procurement procedures, in respect of the tenderers and operators being awarded the contract under the public procurement procedure;

(j) providers of AML/CFT products, to the strict extent that products developed on the basis of the information referred to in paragraph 1 or containing that information are provided only to customers that are obliged entities or competent authorities provided that those providers can demonstrate the need to access the information referred to in paragraph 1 in the context of a contract with an obliged entity or a competent authority and consistent with the right for those obliged entities and competent authorities to access beneficial ownership information pursuant to Article 11 .

In addition to the categories identified under the first subparagraph, Member States shall also ensure that other persons who are able to demonstrate a legitimate interest with respect to the purpose of preventing and combating money laundering, its predicate offences and terrorist financing, are granted access to beneficial ownership information on a case-by-case basis.

3. By [24 months from the date of entry into force of this Directive], Member States shall notify to the Commission:

(a) the list of public authorities that are entitled to consult beneficial ownership information pursuant to paragraph 2, points (f) to (h), and the public authorities or categories of public authorities that are entitled to consult beneficial ownership information pursuant to paragraph 2, point (i);

(b) any additional category of persons who have been found to have a legitimate interest to access beneficial ownership information identified in accordance with paragraph 2, second subparagraph.

Member States shall notify the Commission of any change or addition to the categories referred to in the first subparagraph without delay, and in any case within one month of its occurrence.

The Commission shall make the information received pursuant to this paragraph available to the other Member States.

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5. Member States shall ensure that the central registers keep records of the persons accessing the information pursuant to this Article and are able to disclose them to the beneficial owners when they file a request pursuant to Article 15(1)(c) of Regulation (EU) 2016/679.

However, Member States shall ensure that the information provided by central registers does not lead to the identification of the individual consulting the register where the registers are consulted by:

(a) persons acting for the purpose of journalism, reporting or any other form of expression in the media that are connected with, the prevention or combating of money laundering, its predicate offences or terrorist financing;

(b) civil society organisations that are connected with the prevention and combating of money laundering, its predicate offences and terrorist financing;

In addition, Member States shall ensure that the central registers refrain from disclosing the identity of the entity having consulted the register where the registers are consulted by third country counterparts of Union AML/CFT competent authorities referred to in points (a) and (c) of Article 3, point 31 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], until such time as refraining from disclosure is necessary to protect the analyses or investigations of those authorities.

In relation to the persons referred to in points (a) and (b) of the second subparagraph, Member States shall ensure that where beneficial owners file a request pursuant to Article 15(1)(c) of Regulation (EU) 2016/679, they are provided with information on the function or occupation of the persons having consulted their beneficial ownership information.

For the purposes of the third subparagraph, when requesting access to beneficial ownership information pursuant to this Article, the authorities shall indicate the period for which they request the beneficial ownership registers to refrain from disclosure, which shall not exceed five years, and the reasons for that restriction, including how the provision of the information would jeopardise the purpose of their analysis and investigative activities. Member States shall ensure that, where registers do not disclose the identity of the entity having consulted the beneficial ownership information, any extension of that period shall only be granted on the basis of a motivated request by the authority in the third country, for a period of maximum one year, after which a new motivated request for extension shall be submitted by that authority.

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Article 12a

Procedure for the verification and mutual recognition of a legitimate interest to access beneficial ownership information

- 1. Member States shall ensure that the entities in charge of the registers referred to in Article 10 take measures to verify the existence of the legitimate interest referred to in Article 12 on the basis of documents, information and data obtained from the applicant and, where necessary, information available to them pursuant to Article 12(3).*
- 2. The existence of a legitimate interest to access beneficial ownership information shall be determined by taking into consideration:*
 - (a) the function or occupation of the applicant; and*
 - (b) with the exception of persons referred to in points (a) and (b) of Article 12(2), the connection with the specific legal entities or legal arrangements whose information is being sought.*
- 3. Member states shall ensure that where access to information is requested by a person whose legitimate interest to access beneficial ownership information under one of the categories set out in points (a) to (i) of Article 12(2) has already been verified by the register of another Member State, the verification of the condition in point (a) of the previous paragraph is satisfied by collecting proof of the legitimate interest issued by the register of that other Member State. Member States may apply the procedure set out in the first subparagraph to the additional categories identified by other Member States pursuant to Article 12(2), second subparagraph.*

4. Member States shall ensure that registers verify the identity of the applicant whenever accessing the registers. To that end, Member States shall ensure that sufficient processes are available for the verification of the identity of the applicant, including by allowing the use of electronic identification means and relevant qualified trust services as set out in Regulation (EU) 910/2014 of the European Parliament and of the Council.

5. For the purposes of Paragraph 2, point (a), Member states shall ensure that registers have mechanisms in place to allow repeated access to persons with a legitimate interest to access beneficial ownership information without the need to assess their function or occupation whenever accessing the information.

6. Member states shall ensure that the registers conduct the assessment in paragraph 1 and provide a response to the applicant within twelve working days.

By way of derogation from the first subparagraph, in the case of a sudden high number of requests for accessing beneficial ownership information pursuant to this Article, the deadline for providing a response to the applicant may be extended by twelve working days. If, after the extension has lapsed, the number of incoming requests continues to be high, that deadline may be extended by an additional 12 working days.

Member States shall notify the Commission of any situation covered in the previous subparagraph in a timely manner.

Where registers decide to grant access to beneficial ownership information, they shall issue a certificate granting access for 3 years. Any subsequent requests to access information by the same person shall be addressed within no later than seven working days.

7. Member states shall ensure that registers may only refuse a request to access information on one of the following grounds:

(a) the applicant has not provided the necessary information or documents pursuant to paragraph 1;

(b) the legitimate interest to access beneficial ownership information has not been demonstrated;

(c) where on the basis of information in its possession, the register has a reasonable concern that the information will not be used for the purposes for which it was requested or that the information will be used for purposes that are not connected to the prevention of money laundering or terrorism financing ;

(d) in any of the situations referred to in Article 13;

(e) in the cases referred to in paragraph 3, the legitimate interest to access beneficial ownership information granted by the register of another Member State does not extend to the purposes for which information is sought;

(f) where the applicant is in a third country and responding to the request to access information would not comply with the provisions of Chapter V of Regulation (EU) 2016/679.

Member States shall ensure that registers consider requesting additional information or documents from the applicant prior to refusing a request for access on the grounds listed in points (a) to (c) and (e) of this paragraph. Where registers request additional information, the timeframe for providing a response shall be extended by seven days.

8. Where registers refuse to provide access to information pursuant to paragraph 7, Member States shall require that they inform the applicant of the reasons for refusal and of their right of redress. The register shall document the steps taken to assess the request and to obtain more information pursuant to the previous paragraph.

Member States shall ensure that registers are able to revoke access where any of the grounds listed in paragraph 7 arise or become known to the register after such access has been granted, including, where relevant, on the basis of revocation by a register in another Member State.

9. Member States shall ensure that there are judicial or administrative remedies for challenging the refusal or revocation of access pursuant to this paragraph.

10. Member States shall ensure that registers are able to repeat the verification of the function or occupation identified under paragraph 2, point (a) from time-to-time and in any case not earlier than 12 months after granting access, unless the authority in charge of the register has reasonable grounds to believe that the legitimate interest no longer exists in the case of persons referred to in point (a), (b) and (e).

11. Member States shall require persons who have been granted access pursuant to this Article to notify the entity in charge of the register of changes that may trigger the cessation of a validated legitimate interest, including changes concerning their function or occupation.

12. Member States may choose to make beneficial ownership information held in their central registers available to the applicants on the condition of the payment of a fee, which shall be limited to what is strictly necessary to cover the costs of ensuring the quality of the information held in the registers and of making the information available. Those fees shall be established in such a way as not to undermine the effective access to the information held in the registers.

Article 12b

Templates and procedures

1. The Commission shall adopt by means of implementing acts, technical specifications and procedures necessary for the implementation of access on the basis of a legitimate interest by the registers referred to in Article 10, including:

(a) standardised templates for requesting access to the register and for requesting access to information on legal entities and legal arrangements;

(b) standardised templates to be used by registers to confirm or refuse a request to access the register or to access information;

(c) the duration of the access to be granted to the categories of the public having a legitimate interest to access beneficial ownership information;

(d) procedures to facilitate the mutual recognition of legitimate interest to access beneficial ownership information by the registers in Member States other than the one where the request for access was first made and accepted, including procedures to ensure the secure transfer of information on an applicant;

(e) Procedures for beneficial ownership registers to notify each other of revocations of legitimate interest to access beneficial ownership information pursuant to Article 12a (8).

2. The implementing acts referred to in the first paragraph shall be adopted in accordance with the examination procedure referred to in Article 61(2).

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Article 13

Exceptions to the access rules to beneficial ownership registers

In exceptional circumstances to be laid down in national law, where the access referred to in Articles 11(3) and 12(1) would expose the beneficial owner to disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or where the beneficial owner is a minor or otherwise legally incapable, Member States **shall** provide for an exemption from such access to all or part of the personal information on the beneficial owner. Member States shall ensure that those exemptions are granted upon a detailed evaluation, *on a case by case basis*, of the exceptional nature of the circumstances *and confirmation that those disproportionate risks exist*. Rights to an administrative review of the decision granting an exemption and to an effective judicial remedy shall be guaranteed. A Member State that has granted exemptions shall publish annual statistical data on the number of exemptions granted and reasons stated and report the data to the Commission.

Exemptions granted pursuant to this Article shall not apply to the obliged entities referred to in Article 3, point (3)(b), of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation] that are public officials.

Section 2

Bank account *and custodial crypto-asset account* information

Article 14

Bank account registers and electronic data retrieval systems

1. Member States shall put in place centralised automated mechanisms, such as a central registers or central electronic data retrieval systems, which allow the identification, in a timely manner, of any natural or legal persons holding or controlling payment accounts, **or** bank accounts identified by IBAN, *including virtual IBANs, securities accounts, custodial crypto-asset accounts* and safe-deposit boxes held by a credit *or financial* institution within their territory.

Member States shall notify the Commission of the characteristics of those national mechanisms as well as the criteria pursuant to which information is included in those national mechanisms.

2. Member States shall ensure that the information held in the centralised mechanisms referred to in paragraph 1 is directly accessible in an immediate and unfiltered manner to **FIUs, as well as to AMLA for the purposes of joint analyses pursuant to Article 25 of this Directive and Article 33 of [AMLAR]**. The information shall also be accessible **in a timely manner to supervisory** authorities for fulfilling their obligations under this Directive.

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3. The following information shall be accessible and searchable through the centralised mechanisms referred to in paragraph 1:

(a) for the customer-account holder and any person purporting to act on behalf of the customer: the name, complemented by either the other identification data required under Article 18(1) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation] **or a** unique identification number *as well as the date when the person, if any, purporting to act on behalf of the customer, started and ceased to have the power to act on behalf of the customer. In case of virtual IBAN the customer account holder shall be the holder of the account to which payments addressed to the virtual IBAN are automatically rerouted;*

(b) for the beneficial owner of the customer-account holder: the name, complemented by either the other identification data required under Article 18(1) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation] or a unique identification number *as well as the date when the person became beneficial owner of the holder and the date when this person ceased to be beneficial owner of the holder;*

(c) for the bank or payment account: the IBAN number, *or where the payment account is not identified by an IBAN number, the unique account identifier*, and the date of account opening and closing;

(d) for the safe-deposit box: **█** name of the lessee complemented by either the other identification data required under Article 18(1) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation], or a unique identification number and the **█ start date and, where the service has been terminated, the end date** of the lease **█** .

(da) for the securities account: the unique identifier of the account, and the date of account opening and closing;

(db) for the crypto-asset account: the unique identifier of the account, and the date of account opening and closing.

(dc) for a virtual IBAN issued by a credit or a financial institution: the virtual IBAN number, the unique account identifier of the account to which payments addressed to the virtual IBAN are automatically rerouted, and the date of account opening and closing.

For the purposes of points (a) and (b) of the first subparagraph, the name shall encompass:

(a) for natural persons, the full legal name;

(b) for legal persons, legal arrangements or other organisations with legal capacity, the name under which the legal person, legal arrangement or other organisation is registered.

3a. The Commission is empowered to adopt, by means of implementing acts, the format for the submission of the information to the centralised automated mechanisms.

4. Member States may require other information deemed essential for *FIUs, as well as AMLA for the purposes of joint analyses pursuant to Article 25 of this Directive and Article 33 of [AMLAR] and supervisory* authorities for fulfilling their obligations under this Directive to be accessible and searchable through the centralised mechanisms.

5. The centralised automated mechanisms referred to in paragraph 1 shall be interconnected via the bank account registers (BAR) single access point to be developed and operated by the Commission.

The Commission is empowered to adopt, by means of implementing acts, the technical specifications and procedures for the connection of the Member States' centralised automated mechanisms to the single access point. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2).

6. Member States shall ensure that the information referred to in paragraph 3 is available through the single access point interconnecting the centralised automated mechanisms. Member States shall take adequate measures to ensure that only the information referred to in paragraph 3 that is up to date and corresponds to the actual bank *and payment account, including virtual IBAN, securities account, crypto-asset account and safe-deposit box* is made available through their national centralised automated mechanisms and through the single access point interconnecting the centralised automated mechanisms referred to in this paragraph. The access to that information shall be granted in accordance with data protection rules.

The other information that Member States consider essential for FIUs and other competent authorities pursuant to paragraph 4 shall not be accessible and searchable through the single access point interconnecting the centralised automated mechanisms.

6a. Member States shall ensure that information on holders of bank or payment accounts, including virtual IBANs, securities accounts, crypto-asset accounts and safe-deposit boxes is made available through their national centralised automated mechanisms and through the single access point interconnecting the centralised automated mechanisms for a period of five years after the closure of the account .

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 in specific cases for a further maximum 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.

7. FIUs and, for the purposes of joint analyses pursuant to Article 25 of this Directive and Article 33 of [AMLAR], AMLA shall be granted immediate and unfiltered access to the information on payment and bank accounts, safe-deposit boxes, crypto-asset accounts and securities accounts in other Member States available through the single access point interconnecting the centralised automated mechanisms. **Supervisory authorities shall be granted access in a timely manner to the information available through the single access point.** Member States shall cooperate among themselves and with the Commission in order to implement this paragraph.

Member States shall ensure that the staff of the national FIUs and supervisory authorities that have access to the interconnection referred to in this paragraph maintain high professional standards of confidentiality and data protection, are of high integrity and are appropriately skilled. The same requirements shall apply to AMLA staff in the context of joint analyses and when performing the tasks entrusted on it pursuant to article 5 (2) of AMLA regulation.

Member States shall ensure that the staff of the national FIUs *and supervisory authorities that have access to the interconnection referred to in the first subparagraph* maintain high professional standards of confidentiality and data protection, are of high integrity and are appropriately skilled. *The same requirements shall apply to AMLA staff in the context of joint analyses and when performing the tasks entrusted on it pursuant to article 5 (2) of AMLA regulation.*

8. Member States shall ensure that technical and organisational measures are put in place to ensure the security of the data to high technological standards for the purposes of the exercise by FIUs *and supervisory authorities* of the power to access and search the information available through the single access point interconnecting the centralised automated mechanisms in accordance with paragraphs 5 and 6. *The same requirements shall apply to AMLA in the context of joint analyses and when performing the tasks entrusted on it pursuant to article 5 (2) of AMLA regulation.*

Article 15

Implementing acts for the interconnection of registers

1. Where necessary, the Commission is empowered to adopt, by means of implementing acts, technical specifications and procedures necessary to provide for the interconnection of Member States' central registers in accordance with Article 10(11) with regard to:

- (a) the technical specification defining the set of the technical data necessary for the platform to perform its functions as well as the method of storage, use and protection of such data;
- (b) the common criteria according to which beneficial ownership information is available through the system of interconnection of registers, depending on the level of access granted by Member States;
- (c) the technical details on how the information on beneficial owners is to be made available;
- (d) the technical conditions of availability of services provided by the system of interconnection of registers;

(e) the technical modalities to implement the different types of access to information on beneficial ownership in accordance with Articles 11 and 12 of this Directive, including the authentication of users through the use of electronic identification means and relevant trust services as set out in Regulation (EU) 910/2014;

(f) the payment modalities where access to beneficial ownership information is subject to the payment of a fee according to Article 12(2) taking into account available payment facilities such as remote payment transactions.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2).

2. Where necessary, the Commission is empowered to adopt, by means of implementing acts, technical specifications and procedures necessary to provide for the interconnection of Member States' centralised mechanisms as referred to in Article 14(5), with regard to:

(a) the technical specification defining the methods of communication by electronic means for the purposes of the bank account registers (BAR) single access point;

(b) the technical specification of the communication protocols;

- (c) the technical specifications defining the data security, data protection safeguards, use and protection of the information which is searchable and accessible by means of the bank account registers (BAR) single access point interconnecting the centralised automated mechanisms;
- (d) the common criteria according to which bank account information is searchable through the single access point interconnecting the centralised automated mechanisms;
- (e) the technical details on how the information is made available by means of the single access point interconnecting the centralised automated mechanisms, including the authentication of users through the use of electronic identification means and relevant trust services as set out in Regulation (EU) 910/2014;
- (f) the technical conditions of availability of services provided by the single access point interconnecting the centralised automated mechanisms.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2).

3. When adopting the implementing acts referred to in paragraphs 1 and 2, the Commission shall take into account proven technology and existing practices. The Commission shall ensure that the single access point to be developed and operated does not incur costs above what is absolutely necessary in order to implement this Directive.

Section 3

Real estate registers

Article 16

Single access point to real estate information

1. Member States shall **ensure that** competent authorities **have immediate and direct** access **free of charge** to information which allows the identification in a timely manner of any **land or real estate property and of the natural persons or legal entities or legal arrangements owning that property, as well as** to information allowing the identification and analysis of transactions involving real estate. **That access shall be provided via a single access point to be established in each Member State which allows competent authorities to access, via electronic means, information in digital format, which shall be, where possible machine-readable.**

Access to the single access points in the Member States shall also be granted to AMLA when acting in accordance with Article 25 of this Directive and Article 33 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].

1a. Member States shall ensure that at least the following information, as well as any relevant document, is made available through the single access point:

(a) information on the property:

(i) cadastre parcel and cadastre reference;

(ii) geographical location, including address of the property;

(iii) area/size of the property;

(iv) type of property, including whether built or non-built property and destination of use;

(b) information on proprietorship:

(i) legal owner and any person purporting to act on behalf of the owner;

(ii) where the legal owner is a legal entity, the name and legal form of the legal entity, as well as the company unique identification number and the tax identification number;

(iii) where the legal owner is a legal arrangement, the name of the legal arrangement and the tax identification number;

(iv) price of the property at which it has been acquired;

(v) where applicable, any entitlements or restrictions;

(c) encumbrances:

(i) mortgages,

(ii) judicial restrictions;

(iii) property rights;

(iv) other guarantees, if any;

(d) history of property proprietorship, price and related encumbrances.

Member States shall ensure that, where a cadastre parcel includes multiple properties, the information referred to in the first subparagraph is provided in relation to each property at that cadastre parcel.

Member States shall ensure that historical information pursuant to the first subparagraph, point (d) covers at least the period since [five years prior to the date of entry into force of this Directive].

1b. Member States shall put in place mechanisms to ensure that the information provided through the single access point is up-to-date and accurate.

1c. Member states shall have measures in place to ensure that information held electronically is provided immediately to the requesting competent authority. Where that information is not held electronically, Member States shall ensure that it is provided in a timely manner and in such a way as not to undermine the activities of the requesting competent authority

2. By **[2 years and 3 months after the date of transposition of this Directive]**, Member States shall notify to the Commission:

(a) the characteristics of the single access point established at national level, including the web address at which it can be accessed;

*(b) the list of competent authorities granted access to the **single access point**;*

*(c) any data made available to competent authorities in addition to those listed in paragraph 1a. **]***

Member States shall update such notification when changes to the list of competent authorities or to the extent of access to information granted occurs. The Commission shall make that information, including any change to it, available to the other Member States.

2a. By [5 years after the date of transposition of this Directive], the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring secure and efficient interconnection of the single access points. Where appropriate, that report shall be accompanied by a legislative proposal.

]

CHAPTER III

FIUs

Article 17

Establishment of **█** *the FIU*

1. Each Member State shall establish an FIU in order to prevent, detect and effectively combat money laundering and terrorist financing.
2. The FIU shall be the single central national unit responsible for receiving and analysing **█** *reports submitted by obliged entities in accordance with Article 50 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], or reports submitted by obliged entities in accordance with **█** Articles [54a] and 59(4), point (b) **█** of that Regulation, and any other information relevant to money laundering, its predicate offences or terrorist financing, including information transmitted **█** by customs authorities pursuant to Article 9 of Regulation (EU) 2018/1672 as well as information submitted by supervisory authorities or by other authorities.*

█

3. The FIU shall be responsible for disseminating the results of its analyses and any additional information to **relevant** competent authorities where there are grounds to suspect money laundering, its predicate offences or terrorist financing. It shall be able to obtain additional information from obliged entities.

The FIU's financial analysis function shall consist of the following:

- (a) an operational analysis which focuses on individual cases and specific targets or on appropriate selected information, **prioritized on the basis of risk**, the type and volume of the disclosures received and the expected use of the information after dissemination;
- (b) a strategic analysis addressing money laundering and terrorist financing trends and patterns **and evolutions thereof**.

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4. Each FIU shall be operationally independent and autonomous, which means that it shall have the authority and capacity to carry out its functions freely, including the ability to take autonomous decisions to analyse, request and, **in accordance with paragraph 3**, disseminate specific information. It shall be free from any undue political, government or industry influence or interference.

When a FIU is located within the existing structure of another authority, the FIU's core functions shall be independent and operationally separated from the other functions of the host authority.

5. Member States shall provide their FIUs with adequate financial, human and technical resources in order to fulfil their tasks. FIUs shall be able to obtain and deploy the resources needed to carry out their functions. █

5a. Member States shall ensure that the staff of their FIUs are bound by professional secrecy requirements equivalent to those laid out in Article 50, and that they maintain high professional standards, including high standards of data protection, and are of high integrity and appropriately skilled in relation to the ethical handling of big data sets. Member States shall ensure that FIUs have in place procedures to prevent and manage conflicts of interest.

6. Member States shall ensure that FIUs have rules in place governing the security and confidentiality of information.

6a. Member States shall ensure that FIUs have in place secure and protected channels for communicating and exchanging information by electronic means with competent authorities and obliged entities.

7. Each Member █ **State** shall ensure that its FIU is able to make arrangements or engage independently with other domestic competent authorities pursuant to Article 45 on the exchange of information.

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7b. By [1 year after the date of transposition of this Directive], AMLA shall issue guidelines addressed to FIUs on:

(a) the measures to be put in place to preserve the operational autonomy and independence of the FIU, including measures to prevent that conflicts of interest affect its operational autonomy and independence, and

(b) the nature, features and objectives of operational and of strategic analysis.

(c) tools and methods for use and cross-check of financial, administrative and law enforcement information to which FIUs have access.

(d) practices and procedures for the exercise of the suspension or the withholding of consent to a transaction and suspension or monitoring of an account or business relationship pursuant to Article 20.

Article 17a

Fundamental Rights Officer

- 1. Member States shall ensure that FIUs designate a Fundamental Rights Officer. The Fundamental Rights Officer may be a member of the existing staff of the FIU.*
- 2. The Fundamental Rights Officer shall perform the following tasks:*
 - (a) advise the staff of the FIU on any activity carried out by the FIU where he or she deems it necessary, or where requested by the staff without impeding or delaying those activities;*
 - (b) promote and monitor the FIU's compliance with fundamental rights;*
 - (c) provide non-binding opinions on the compliance of FIU's activities with fundamental rights;*
 - (d) inform the Head of FIU about possible violations of fundamental rights in the course of the FIU's activities.*
- 3. The FIU shall ensure that the Fundamental Rights Officer does not receive any instructions regarding the exercise of his or her tasks.*

Article 18

Access to information

1. **Member States shall ensure that FIUs, regardless of their organisational status, have access to the information that they require to fulfil their tasks properly, including financial, administrative and law enforcement information.** Member States shall ensure that their FIUs have **at least:**

(a) immediate and ■ direct access to ■ the following financial information:

(i) information contained in the national centralised automated mechanisms in accordance with Article 14;

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(iii) information from obliged entities, **including information on transfers 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] and transfers of crypto-assets as defined in Article 3, point (10) of that Regulation;**

(iv) information on mortgages and loans;

(v) information contained in the national currency and currency exchange databases;

(vi) information on securities;

(b) immediate and direct access to the following administrative information:

(i) fiscal data, including data held by tax and revenue authorities *as well as data obtained pursuant to article 8(3a) of Council Directive 2011/16/EU*³¹.

(ib) information on public procurements for goods, services or concessions;

(ii) *the information from the single access point as referred to in article 16, as well as to* national real estate registers or electronic data retrieval systems and land and cadastral registers;

(iii) national citizenship and population registers of natural persons;

(iv) national passports and visas registers;

(v) cross-border travel databases;

(vi) commercial databases, including business and company registers and PEP databases;

(vii) national motor vehicles, aircraft and watercraft registers;

³¹ *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 064 11.3.2011, p. 1).*

- (viii) national social security registers;
- (ix) customs data, including cross-border physical transfers of cash;
- (x) national weapons and arms registers;
- (xi) national beneficial ownership registers;
- (xii) data available through the interconnection of beneficial ownership registers in accordance with Article 10(11).
- (xiii) registers on non-profit organisations;
- (xiv) information held by national financial supervisors and regulators, in accordance with Article 45 and Article 50(2);
- (xv) databases storing data on CO₂ emission trading established pursuant to Commission Regulation (EU) 389/2013³².
- (xvi) information on annual financial statements by companies;
- (xvii) national migration/immigration registers;
- (xviii) information held by commercial courts;
- (xix) information held in insolvency databases and by insolvency practitioners;

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³² Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 (OJ L 122, 3.5.2013, p.1-59).

(xixb) information on funds and other assets frozen or immobilized pursuant to targeted financial sanctions.

(c) direct or indirect access to the following law enforcement information:

- (i) any type of information or data which is already held by competent authorities in the context of preventing, detecting, investigating or prosecuting criminal offences;
- (ii) any type of information or data which is held by public authorities or by private entities in the context of preventing, detecting, investigating or prosecuting criminal offences and which is available to competent authorities without the taking of coercive measures under national law.

The information referred to in point (c) **shall** include criminal records, information on investigations, information on the freezing or seizure of assets, or on other investigative or provisional measures and information on convictions and on confiscations.

Member States may allow the restriction of access to the law enforcement information referred to in point (c) on a case-by-case basis, where the provision of such information is likely to jeopardise an ongoing investigation.

1a. Access to the information listed in paragraph 1 shall be considered direct and immediate where the information is contained in an IT database, register or data retrieval system from which the FIU can retrieve the information without any intermediate steps, or where the following conditions are met:

(a) the entities or authorities holding the information transmit it expeditiously to FIUs and

(b) no entity, authority or third party is able to interfere with the requested data or the information to be provided.

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*3. Member States shall ensure that, whenever possible, the FIU is granted direct access to the information listed in paragraph 1, first subparagraph, point (c). In the cases where █ FIU is provided with indirect access to information, the requested authority shall █ **provide the requested information** in a timely manner.*

4. In the context of its functions, each FIU shall be able to request, obtain and use information from any obliged entity to perform its functions pursuant to Article 17(3), even if no prior report is filed pursuant to Article 50(1), point (a), or Article 51(1) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]. Obligated entities shall not be obliged to comply with requests for information made pursuant to this paragraph when they concern information obtained in the situations referred to in Article 51(2) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final].

Article 19

Responses to requests for information

1. Member States shall ensure that **█** *their FIU is able to* respond in a timely manner to reasoned requests for information *motivated by concerns relating to money laundering, its predicate offences or terrorist financing by the competent authorities referred to in Article 2 (31) (c) and (d) [please insert the reference to AMLR] in their respective Member State where that* **█** information is **█** *already held by the FIU and is necessary on a case-by-case basis*. The decision on conducting the dissemination of information shall remain with the FIU.

Where there are objective grounds for assuming that the provision of such information would have a negative impact on ongoing investigations or analyses, or, in exceptional circumstances, where disclosure of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or irrelevant with regard to the purposes for which it has been requested, the FIU shall be under no obligation to comply with the request for information.

In such case, the FIU shall provide the reasons in writing to the requesting authority.

2. Competent authorities shall provide feedback to the FIU about the use made of, *and the usefulness of*, the information provided in accordance with this Article *and article 17(3), and about the outcome of actions taken and of the investigations performed on the basis of that information*. Such feedback shall be provided as soon as possible and in any case, *in an aggregated form*, at least on an annual basis, in such a way as to **█** allow the FIU to **█** *improve* its operational analysis function.

Article 19a

Provision of information to supervisors

1. Member States shall ensure that FIUs provide supervisors, spontaneously or upon request, information that may be relevant for the purposes of supervision pursuant to Chapter IV of this Directive, including at least information on:

(a) the quality and quantity of suspicious transaction reports submitted by obliged entities;

(b) the quality and timeliness of responses provided by obliged entities to FIU requests pursuant to Article 50(1), point (b) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation – COM/2021/420 final];

(c) relevant results of strategic analyses carried out pursuant to Article 17(3), point (b), as well as any relevant information on ML/TF trends and methods, including geographical, cross-border and emerging risks.

2. Member States shall ensure that FIUs notify supervisors whenever information in their possession indicates potential breaches by obliged entities of the requirements of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation – COM/2021/420 final] and of Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 – COM/2021/422 final].

3. Except where strictly necessary for the purposes of paragraph 2, Member States shall ensure that information provided by FIUs pursuant to this Article does not contain any information on specific natural or legal persons nor cases including natural or legal persons subject to an ongoing analysis or investigation or which may lead to the identification of natural or legal persons.

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Article 20

Suspension or withholding of consent

1. Member States shall ensure that FIUs are empowered to take urgent action directly or indirectly, where there is a suspicion that a transaction is related to money laundering or terrorist financing, to suspend or withhold consent to **that** transaction.

Member States shall ensure that where the need to suspend or withhold consent to a transaction is established on the basis of a suspicion reported pursuant to Article 50 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation – COM/2021/420 final], the suspension or withholding of consent is imposed on the obliged entity within the period referred to in Article 52 of that Regulation. Where the need to suspend a transaction is based on the analytical work of the FIU, regardless of whether a prior report has been filed by the obliged entity, the suspension shall be imposed as soon as possible by the FIU.

The suspension or withholding of consent to the transaction shall be imposed by the FIU in order to preserve the funds, to perform its analyses, including the analysis of the transaction, to assess whether the suspicion is confirmed and if so, to disseminate the results of the analyses to the relevant competent authorities to allow for the adoption of appropriate measures.

Member States shall define the period of suspension applicable for the FIUs analytical work which shall not exceed 10 working days. Member States may define a longer period where, pursuant to national law, FIUs perform the function of tracing, seizing, freezing or confiscating criminal assets. In case a longer period of suspension is defined, Member States shall ensure that FIUs exercise their function subject to appropriate national safeguards such as the possibility for the person whose transaction is suspended to challenge this suspension before a court.

Member States shall ensure that the FIUs are empowered to lift the suspension at any time where the FIU concludes that the conditions set out in the third subparagraph are no longer met.

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The FIU shall be empowered to impose such suspension or withholding of consent at the request of an FIU from another Member State ■.

2. Where there is a suspicion that ■ a bank or payment account, *a crypto-asset account or a business relationship is* ■ related to money laundering or terrorist financing, Member States shall ensure that the FIU is empowered to take urgent action, directly or indirectly, to suspend the use of ■ *that account or to suspend the business relationship* in order to ■ *preserve the funds, to perform its analyses, to assess whether the suspicion is confirmed and if so, to* ■ disseminate the results of the ■ *analyses* to the *relevant* competent authorities *to allow for the adoption of appropriate measures.*

Member States shall define the period of suspension applicable for the FIUs analytical work which shall not exceed 5 working days. Member States may define a longer period where, pursuant to national law, FIUs perform the function of tracing, seizing, freezing or confiscating criminal assets. In case a longer period of suspension is defined, Member States shall ensure that FIUs exercise their function subject to appropriate national safeguards such as the possibility for the person whose bank or payment account, crypto-asset account or business relationship is suspended to challenge this suspension before a court.

Member States shall ensure that the FIUs are empowered to lift the suspension at any time where the FIU concludes that the conditions set out in the first subparagraph are no longer met.

2a. The FIU shall be empowered to impose such suspension of an account or business relationship at the request of an FIU from another Member State.

█

3a. Member States shall ensure that the FIU is empowered to instruct obliged entities to monitor for a period of time to be specified by the FIU, the transactions or activities that are being carried out through one or more bank, payment or crypto-asset accounts or other business relationships managed by the obliged entity for persons who present a significant risk of money laundering or terrorist financing. Member States shall also ensure that the FIU is empowered to instruct the obliged entity to report on the results of the monitoring.

3b. The FIU shall be empowered to impose such monitoring measures at the request of an FIU from another Member State during a specified period.

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4b. Application of the suspension or withholding of consent in accordance with this Article shall not involve the FIU or its directors or employees in liability of any kind.

Article 21

■ *FIU annual report*

1. Each Member State shall ensure that its FIU ■ *publishes* a yearly report on its activities. The report shall contain statistics on:

(-a) follow up given by the FIU to suspicious transactions reports it has received;

(a) suspicious transaction reports submitted by obliged entities;

(b) disclosures by supervisors and beneficial ownership registers;

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- (c) disseminations to competent authorities *and follow-up given to those disseminations*;
- (d) requests submitted to and received from other FIUs;
- (ea) requests submitted to and received from competent authorities referred to in Article 2, point (31)(c) of regulation [please insert reference to AMLR];*
- (eb) human resources allocated.*
- (e) data on cross-border physical transfers of cash **■** *transmitted* by customs authorities pursuant to Article 9 of 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.

The report referred to in the first subparagraph shall also contain information on the trends and typologies identified in the files disseminated to other competent authorities. ***The information contained in the report shall not permit the identification of any natural or legal person.***

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Article 21a

Feedback by FIU

1. Member States shall ensure that the FIU provides obliged entities with feedback on the reporting of suspected money laundering, its predicate offences or terrorist financing. Such feedback shall cover at least the quality of the information provided, the timeliness of reporting, the description of the suspicion and the documentation provided at submission stage.

Feedback pursuant to this Article shall not be understood as encompassing each report submitted by obliged entities.

The FIU shall provide such feedback at least once per year, whether provided to the individual obliged entity or to groups or categories of obliged entities, taking into consideration the overall number of suspicious transactions reported by the obliged entities.

Such feedback shall also be made available to supervisors to allow them to perform risk-based supervision in accordance with Article 31.

FIUs shall report on a yearly basis to AMLA on the provision of feedback to obliged entities pursuant to this Article, and shall provide statistics on the number of suspicious transaction reports submitted by the categories of obliged entities.

By [1 year after the date of transposition of this Directive], AMLA shall issue recommendations to FIUs on best practices and approaches towards the provision of feedback, including on the type and frequency of feedback.

The obligation to provide feedback shall not jeopardise any ongoing analytical work carried out by the FIU or any investigation or administrative action subsequent to the dissemination by the FIU, and shall not affect the applicability of data protection and confidentiality requirements.

2. Member States shall ensure that FIUs provide customs authorities with feedback, at least on an annual basis, on the effectiveness of and follow-up to the information transmitted pursuant to Article 9 of Regulation (EU) 2018/1672.

Article 21b

Alerts to obliged entities

1. Member states shall ensure that FIUs are able to alert obliged entities of information relevant for the performance of customer due diligence pursuant to Chapter 3 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]. That information shall include:

- (a) types of transactions or activities that present a significant risk of ML/TF;*
- (b) specific persons that present a significant risk of ML/TF;*
- (c) specific geographic areas that present a significant risk of ML/TF.*

2. The measure referred in paragraph 1 shall be applied for a period of time defined in national law, which shall not exceed 6 months.

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3. FIUs shall provide obliged entities with strategic information about typologies, risk indicators and trends in money laundering and terrorist financing on an annual basis.

Article 22

Cooperation between FIUs

Member States shall ensure that FIUs cooperate with each other to the greatest extent possible, regardless of their organisational status.

Article 23

Protected channels of communication

1. A system for the exchange of information between FIUs of the Member States shall be set up (**FIU.net**). The system shall ensure a secure communication and *exchange of information and* shall be capable of producing a written record under conditions that allow ascertaining authenticity. That system may also be used for communications with FIUs counterparts in third countries and with other authorities and *with* Union bodies, *offices and agencies*. FIU.net shall be managed by AMLA.

The FIU.net shall be used for the exchange of information between FIUs and AMLA pursuant to Article 25 of this Directive and Article 33 of Regulation [please insert reference to AMLA Regulation - 2021/0240 (COD)].

2. Member States shall ensure that **FIUs exchange** information pursuant to Article 24 **and 25** using the FIU.net. In the event of technical failure of the FIU.net, the information shall be **exceptionally** transmitted by any other appropriate means ensuring a high level of data security **and data protection**.

Exchanges of information between FIUs and their counterparts in third countries **that are not connected to the FIU.net shall** take place through protected channels of communication.

3. Member States shall ensure that, in order to fulfil their tasks as laid down in this Directive, their FIUs cooperate **to the greatest extent possible** in the application of state-of-the-art technologies in accordance with their national law.

Member States shall also ensure that FIUs cooperate to the greatest extent possible in the application of solutions developed and managed by AMLA in accordance with Article 5(5), point (e), Article 36 (1), point (d) and Article 37 of Regulation ... [please insert reference to AMLA Regulation - 2021/0240 (COD)].

3a. Member States shall ensure that FIUs are able to use the functionalities of the FIU.net to cross-match, on a hit/no-hit basis, the data they make available on the FIU.net, with the data made available on that system by other FIUs and Union bodies, offices and agencies insofar as such cross-matching falls within the respective mandates of those Union bodies, offices and agencies.

█

3c. AMLA may suspend the access of an FIU or counterpart in a third country or Union body, office or agency to the FIU.net where it has grounds to believe that such an access would jeopardise the implementation of this Chapter and the security and confidentiality of the information held by FIUs and exchanged through the FIU.net system, including where there are concerns in relation to an FIU's lack of independence and autonomy.

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Article 24

Exchange of information between FIUs

1. Member States shall ensure that FIUs exchange, spontaneously or upon request, any information that may be relevant for the processing or analysis of information by the FIU related to money laundering, its predicate offences, or terrorist financing, and the natural or legal person involved, ***regardless of the type of predicate offences that may be involved, and*** even if the type of predicate offences that may be involved is not identified at the time of the exchange.

A request shall contain the relevant facts, background information, reasons for the request, ***links with the country of the requested FIU*** and how the information sought will be used.

When an FIU receives a report pursuant to Article 50(1), the first subparagraph, point (a), of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] which concerns another Member State, it shall promptly forward the report, or all the relevant information obtained from it, to the FIU of that Member State.

2. By [2 years after the date of entry into force of this Directive], 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 exchange of the information referred to in paragraph 1.

3. The Commission is empowered to adopt the implementing technical standards referred to in paragraph 2 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].

3a. By [2 years after the date of entry into force of this Directive], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify the relevance and selection criteria when determining whether a report pursuant to Article 50(1), first subparagraph, point (a), of Regulation [please insert reference to Anti-Money Laundering Regulation - 2021/0239 (COD)] concerns another Member State as referred to in the third subparagraph of paragraph 1.

3b. The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in paragraph 3a of this Article in accordance with Articles 38 to 41 of Regulation [please insert reference – proposal for Regulation establishing the Anti-money Laundering Authority].

4. By *[1 year after the date of transposition of this Directive]*, AMLA shall issue guidelines addressed to FIUs on the **procedures** to be **put in place when forwarding and receiving** a report pursuant to Article 50(1), the first subparagraph, point (a), of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] **which** concerns another Member State, **and the follow-up** to be **given to** that report .

5. Member States shall ensure that the FIU to whom the request is made is required to use the whole range of its available powers which it would normally use domestically for receiving and analysing information when it replies to a request for information referred to in paragraph 1 from another FIU.

When an FIU seeks to obtain additional information from an obliged entity established in another Member State which operates on the territory of its Member State, the request shall be addressed to the FIU of the Member State in whose territory the obliged entity is established. That FIU shall obtain information in accordance with Article 50(1) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] and transfer the answers promptly.

6. Member States shall ensure that where an FIU is requested to provide information pursuant to paragraph 1, it shall respond to the request as soon as possible and in any case no later than **■ five working days** after the receipt of the request *if the FIU is either in possession of the requested information or the requested information is held in a database or register which is directly accessible by the requested FIU*. In exceptional, duly justified cases, this time limit may be extended to a maximum of **■ 10 working days**. Where the requested FIU is unable to obtain the requested information, it shall inform the requesting FIU thereof.

7. Member States shall ensure that in exceptional, justified and urgent cases and, by way of derogation from paragraph 6, where pursuant to paragraph 1 an FIU is requested to provide information which is either held in a database or registry directly accessible by the requested FIU or which is already in its possession, the requested FIU shall provide that information no later than **■ one working day** after the receipt of the request.

If the requested FIU is unable to respond within **■ one working day** or cannot access the information directly, it shall provide a justification. Where the provision of the information requested within the period of **■ one working day** would put a disproportionate burden on the requested FIU, it may postpone the provision of the information. In that case the requested FIU shall immediately inform the requesting FIU of this postponement. *The requested FIU may extend to a maximum of three working days the deadline to reply to a request for information ■ .*

8. An FIU may refuse to exchange information only in exceptional circumstances where the exchange could be contrary to fundamental principles of its national law. Those exceptional circumstances shall be specified in a way which prevents misuse of, and undue limitations on, the free exchange of information for analytical purposes.

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By [1 year after the date of transposition of this Directive], Member States shall notify to the Commission the exceptional circumstances referred to in the first subparagraph. Member States shall update such notifications where changes to the exceptional circumstances identified at national level occur.

The Commission shall publish the consolidated list of such notifications.

By ... [24 months after the date of transposition of this Directive], the Commission shall submit a report to the European Parliament and Council assessing whether the exceptional circumstances notified pursuant to the second subparagraph are justified.

Article 25

Joint analyses

1. Member States shall ensure that their FIUs are able to carry out joint analyses of suspicious transactions and activities.
2. For the purpose of paragraph 1, the relevant FIUs, assisted by AMLA in accordance with Article 33 of Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]*, shall set up a joint analysis team for a specific purpose and limited period, which may be extended by mutual consent, to carry out operational analyses of suspicious transactions or activities involving one or more of the FIUs setting up the team.
3. A joint analysis team may be set up where:
 - (a) an FIU's operational analyses require difficult and demanding analyses having links with other Member States;
 - (b) a number of FIUs are conducting operational analyses in which the circumstances of the case **justify**, concerted action in the Member States involved.

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A request for the setting up of a joint analysis team may be made by any of the FIUs concerned *or AMLA pursuant to Article 33a*.

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4. Member States shall ensure that the member of their FIU allocated to the joint analysis team is able, in accordance with his or her national law and within the limits of his or her competence, to provide the team with information available to its FIU for the purpose of the analysis conducted by the team.

5. Where the joint analysis team needs assistance from an FIU other than those which are part of the team, it might request that other FIU to:

(a) join the joint analysis team;

(b) submit financial intelligence and financial information to the joint analysis team.

5a. Member States shall ensure that FIUs are able to invite third parties, including where relevant Union bodies, offices and agencies, to take part in the joint analyses where relevant for the purposes of the joint analyses and where such participation falls within the respective mandates of those third parties.

Member States shall ensure that the FIUs participating in the joint analysis determine the conditions that apply in relation to the participation of third parties and put in place measures guaranteeing the confidentiality and security of the information exchanged. Member States shall ensure that the information exchanged is used solely for the purposes for which that joint analysis was set up.

Article 26

Use by FIUs of information exchanged between them

Information and documents received pursuant to Articles 22, **24 and 25** shall be used for the accomplishment of the FIU's tasks as laid down in this Directive. When exchanging information and documents pursuant to Articles 22 and 24, the transmitting FIU may impose restrictions and conditions for the use of that information, ***except where the transmission consists of a report submitted by an obliged entity pursuant to Article 50(1), or information derived therefrom, which concerns another Member State where the obliged entity operates through the freedom to provide services and which includes no link to the Member State of the transmitting FIU.*** The receiving FIU shall comply with those restrictions and conditions.

Member States shall ensure that FIUs designate at least one contact person or point to be responsible for receiving requests for information from FIUs in other Member States.

Article 27

Consent to further dissemination of information exchanged between FIUs

1. Member States shall ensure that the information exchanged pursuant to Articles 22, **24 and 25** is used only for the purpose for which it was sought or provided and that any dissemination of that information by the receiving FIU to any other authority, agency or department, or any use of this information for purposes beyond those originally approved, is made subject to the prior consent by the FIU providing the information.

The requirements of the first subparagraph shall not apply where the information provided by the transmitting FIU consists of a report submitted by an obliged entity pursuant to Article 50(1), which concerns another Member State where the obliged entity operates through the freedom to provide services and which includes no link to the Member State of the FIU providing the information.

2. Member States shall ensure that the requested FIU's prior consent to disseminate the information to competent authorities is granted promptly and to the largest extent possible, regardless of the type of predicate offences **and whether or not the predicate offence has been identified**. The requested FIU shall not refuse its consent to such dissemination unless this would fall beyond the scope of application of its AML/CFT provisions or could lead to impairment of an investigation, or would otherwise not be in accordance with fundamental principles of national law of that Member State. Any such refusal to grant consent shall be appropriately explained. The cases where FIUs may refuse to grant consent shall be specified in a way which prevents misuse of, and undue limitations to, the dissemination of information to competent authorities.

2a. By [1 year after the date of transposition of this Directive], Member States shall notify to the Commission the exceptional circumstances in which dissemination would not be in accordance with fundamental principles of national law referred to in paragraph 2.

Member States shall update such notifications where changes to the exceptional circumstances identified at national level occur.

The Commission shall publish the consolidated list of such notifications.

2b. By ... [[24 months] after the date of transposition of this Directive], the Commission shall submit a report to the European Parliament and Council assessing whether the exceptional circumstances notified pursuant to the this paragraph are justified.

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Article 28

Effect of criminal law provisions

Differences between national law definitions of predicate offences shall not impede the ability of FIUs to provide assistance to another FIU and shall not limit the exchange, dissemination and use of information pursuant to Articles 24, 25, 26 and 27.

Article 28a

Confidentiality of reporting

- 1. Member States shall ensure that FIUs have in place mechanisms to protect the identity of the obliged entities and their employees or persons in an equivalent position, including agents and distributors, who report suspicions pursuant to Article 50(1), point (a) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final].*
- 2. Member States shall ensure that FIUs do not disclose the source of the report referred to in the first paragraph, when responding to requests for information by competent authorities pursuant to Article 19 or when disseminating the results of their analyses pursuant to Article 17. This paragraph is without prejudice to the applicable national criminal procedural law.*

CHAPTER IV
ANTI-MONEY LAUNDERING SUPERVISION

Section 1
General provisions

Article 29
Powers and resources of national supervisors

1. *Each Member State shall ensure that all obliged entities established in its territory, and except for the circumstances covered in Article 29a, are subject to adequate and effective supervision. To that end, each Member States shall appoint one or more supervisors to monitor effectively, and to take the measures necessary to ensure, compliance by the obliged entities with the requirements set out in Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], Regulation [please insert reference to the Funds Transfer Regulation - 2021/0241(COD)], and with the national rules adopted by that Member State for the implementation of those regulations.*

Where, for reasons of overriding general interest, Member States have introduced specific authorisations requirements for obliged entities to operate in their territory under the freedom to provide services, they shall ensure that the activities of those obliged entities provided in their territory are subject to supervision by their national supervisors, regardless of whether the activities are carried out through an infrastructure in their territory or remotely. Member States shall also ensure that supervision under this subparagraph is notified to the supervisors of the Member State where the head office of the obliged entity is established.

The provisions of this paragraph shall not apply where AMLA exercises supervisory functions in accordance with Article 5(2) of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].

2. Member States shall ensure that supervisors have adequate financial, human and technical resources to perform their tasks as listed in paragraph 4. Member States shall ensure that staff of those authorities are of high integrity and appropriately skilled, and maintain high professional standards, including standards of confidentiality, data protection and standards addressing conflicts of interest.

3. In the case of the obliged entities referred to in Article 3, points (3)(a) **and (b)**, of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], Member States may allow the function referred to in paragraph 1 of this Article to be performed by self-regulatory bodies, provided that those self-regulatory bodies have the powers referred to in paragraph 5 of this Article and have adequate financial, human and technical resources to perform their functions. Member States shall ensure that staff of those bodies are of high integrity and appropriately skilled, and that they maintain high professional standards, including standards of confidentiality, data protection and standards addressing conflicts of interest.

3a. Where a Member State entrusted supervision of a category of obliged entities to more than one supervisor, it shall ensure that supervision under this Article is performed in a consistent and efficient manner across the sector. To that end, that Member State shall appoint a leading supervisor or establish a coordination mechanism among those supervisors.

Where Member States have entrusted supervision of all obliged entities to more than one supervisor, they shall ensure that a coordination mechanism is set up to ensure effective supervision of the highest standards. Such coordination mechanism shall include all supervisors, except where:

(a) supervision is entrusted to a self-regulatory body, in which case the Authority referred to in Article 38 shall participate in the mechanism;

(b) supervision of a category of obliged entity is entrusted to several supervisors, in which case the lead supervisor shall participate in the mechanism. Where no lead supervisor has been appointed, supervisors shall designate a representative among them.

4. For the purposes of paragraph 1, Member States shall ensure that the national supervisors perform the following tasks:

(a) to disseminate relevant information to obliged entities pursuant to Article 30;

(b) to decide of those cases where the specific risks inherent in a sector are clear and understood and individual documented risk assessments pursuant to Article 8 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] are not required.

(c) to verify the adequacy and implementation of the internal policies, controls and procedures of obliged entities pursuant to Chapter II of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] and of the human resources allocated to the performance of the tasks required under that Regulation, ***as well as, for supervisors of collective investment funds, to decide on those cases where the fund may outsource the reporting of suspicious activities pursuant to Article 14a(2), second subparagraph of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] to a service provider;***

- (d) to regularly assess and monitor the money laundering and terrorist financing risks *as well as the risks of evasion and non-implementation of targeted financial sanctions* the obliged entities are exposed to;
- (e) to monitor compliance by obliged entities with regard to their obligations in relation to targeted financial sanctions;
- (f) to conduct all the necessary off-site, on-site and thematic investigations and any other inquiries, assessments and analyses necessary to verify that obliged entities comply with the requirements of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], and with any administrative measures taken pursuant to Article 41;
- (g) to take appropriate supervisory measures to address any breaches of applicable requirements by the obliged entities identified in the process of supervisory assessments and follow up on the implementation of such measures.

5. Member States shall ensure that supervisors have adequate powers to perform their tasks as provided in paragraph 4, including the power to:

- (a) compel the production of any information from obliged entities which is relevant for monitoring and verifying compliance with the requirements of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] and to perform checks, including from ■ service providers to whom the obliged entity has outsourced part of its tasks to meet the requirements of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final];
- (b) impose appropriate and proportionate administrative measures to remedy the situation in the case of breaches, including through the imposition of ■ *pecuniary* sanctions in accordance with Section 4 of this Chapter.

6. Member States shall ensure that financial supervisors and supervisors in charge of gambling operators have powers additional to those referred to in paragraph 5, including the power to investigate the business premises of the obliged entity without prior announcement where the proper conduct and efficiency of inspection so require, and that they have all the necessary means to carry out such investigation.

For the purposes of the first subparagraph, the supervisors shall at least be able to:

- (a) examine the books and records of the obliged entity and take copies or extracts from such books and records;
- (b) obtain access to any software, databases, IT tools or other electronic means of recording information used by the obliged entity;
- (c) obtain written or oral explanations from any person responsible for AML/CFT internal policies and controls or their representatives or staff, as well as any representative or staff of entities to which the obliged entity has outsourced tasks pursuant to Article 14a of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], and interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation.

Article 29a

Supervision of forms of infrastructure of certain intermediaries operating under the freedom to provide services

1. Member States shall ensure that the activities of the following obliged entities that are carried out in their territory under the freedom to provide services through agents, distributors, or through other types of infrastructure are subject to supervision by their national supervisors, including when those activities are carried out under an authorisation obtained under Directive (EU) 2013/36:

- (a) electronic money issuers as defined in Article 2(3) of Directive 2009/110/EC³³;*
- (b) payment service providers as defined in Article 4(11) of Directive (EU) 2015/2366, and*
- (c) crypto-asset service providers.*

For the purposes of the first subparagraph, the supervisors of the Member State where the activities are carried out shall monitor effectively and ensure compliance with the requirements set out in Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], Regulation [please insert reference to the Funds Transfer Regulation - 2021/0241(COD)], and with the rules adopted by that Member State for the implementation of those Regulations.

³³ *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).*

2. By way of derogation from the first paragraph, supervision of those agents, distributors or other types of infrastructure shall be carried out by the supervisor of the Member State where the head office of the obliged entity is established provided that:

(a) the criteria set out in the regulatory technical standard referred to in Article 31a(2) are not met, and

(b) the supervisor of the Member State where those agents, distributors or other types of infrastructure are located notifies the supervisor of the Member State where the head office of the obliged entity is established that considering the limited infrastructure of the entity in its territory, supervision of those activities shall be carried out by the supervisor of the Member State where the obliged entity has its head office.

3. For the purposes of this Article, the supervisor of the Member State where the head office of the obliged entity is established and the supervisor of the Member State where the obliged entity operates under the freedom to provide services through agents, distributors or other types of infrastructure shall provide each other any information necessary to assess whether the criteria of the paragraph 2, point (a) are met, including on any change in the circumstances of the obliged entity that may have an impact on the satisfaction of those criteria.

4. Member States shall ensure that the supervisor of the Member State where the obliged entity has its head office informs the obliged entity within two weeks of receiving the notification under paragraph 2, point (b) that it will supervise the activities of the agents, distributors or other types of infrastructure through which the obliged entities operates under the freedom to provide services in another Member State, and of any subsequent change to their supervision.

5. The provisions of this Article shall not apply where AMLA exercises supervisory functions in accordance with Article 5(2) of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].

Article 30

Provision of information to obliged entities

1. Member States shall ensure that supervisors make information on money laundering and terrorist financing available to the obliged entities under their supervision.
2. The information referred to in paragraph 1 shall include the following:
 - (a) the supra-national risk assessment drawn up by the Commission pursuant to Article 7 and any relevant recommendation by the Commission on the basis of that Article;
 - (b) national or sectoral risk assessments drawn up pursuant to Article 8;

- (c) relevant guidelines, recommendations and opinions issued by AMLA in accordance with Articles 43 and 44 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final];
- (d) information on third countries identified pursuant to Section 2 of Chapter III of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final];
- (e) any guidance and report produced by AMLA, other supervisors and, where relevant, the public authority overseeing self-regulatory bodies, the FIU or any other competent authority or international organisations and standard setters regarding money laundering and terrorist financing methods which might apply to a sector and indications which may facilitate the identification of transactions or activities at risk of being linked to money laundering and terrorist financing in that sector, as well as on obliged entities' obligations in relation to targeted financial sanctions.

2a. Member States shall ensure that supervisors carry out outreach activities, as appropriate, to inform the obliged entities under their supervision of their obligations.

3. Member States shall ensure that supervisors make information on persons or entities designated in relation to targeted financial sanctions available to the obliged entities under their supervision immediately.

Article 31

Risk-based supervision

1. Member States shall ensure that supervisors apply a risk-based approach to supervision. To that end, Member States shall ensure that they:

- (a) have a clear understanding of the risks of money laundering and terrorist financing present in their Member State;
- (b) assess all relevant information on the specific domestic and international risks associated with customers, products and services of the obliged entities;
- (c) base the frequency and intensity of on-site, off-site and thematic supervision on the risk profile of obliged entities, and on the risks of money laundering and terrorist financing in that Member State. To that end, supervisors shall draw up annual supervisory programmes **■**, *which shall also take into account the timing and resources needed to react promptly in the event of objective and significant indications of breaches of the requirements set out in Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] and Regulation [please insert reference to the Funds Transfer Regulation - 2021/0241(COD)]*

2. By [2 years after the date of entry into force of this Directive], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall set out the benchmarks and a methodology for assessing and classifying the inherent and residual risk profile of obliged entities, as well as the frequency at which such risk profile shall be reviewed. Such frequency shall take into account any major events or developments in the management and operations of the obliged entity, as well as the nature and size of the business.
3. The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in paragraph 2 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].
4. By [1 year after the date of transposition of this Directive], AMLA shall issue guidelines addressed to supervisors on:
- (a)* the characteristics of a risk-based approach to supervision;
 - (b) the measures to be put in place within supervisors to ensure adequate and effective supervision, including to train their staff;*
 - (c)* the steps to be taken when conducting supervision on a risk-sensitive basis.

Where relevant, the Guidelines referred to in the first subparagraph shall take into account the outcomes of the assessments carried out pursuant to Articles 28 and 31 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].

5. Member States shall ensure that supervisors take into account the degree of discretion allowed to the obliged entity, and appropriately review the risk assessments underlying this discretion, and the adequacy of its policies, internal controls and procedures.

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6a. Member States shall ensure that supervisors, prepare a detailed annual activity report and that a summary of that report is made publicly available. That summary shall not contain confidential information and shall include:

(a) the categories of obliged entities under the supervision and the number of obliged entities per category;

(b) a description of the powers the supervisors are entrusted with and tasks assigned to them as well as, where relevant, of the participation in the mechanisms referred to in Article 29(3a) and, for the lead supervisor, a summary of the coordination activities carried out;

(c) an overview of the supervisory activities carried out.

Article 31a

Contact points

- 1. For the purposes of Article 29(1) and of Article 29a(1), Member States may require electronic money issuers , payment service providers and crypto-assets service providers operating establishments in their territory other than a subsidiary or a branch, or operating in their territory through agents, distributors or other types of infrastructure under the freedom to provide services , to appoint a central contact point in their territory. That central contact point shall ensure, on behalf of the obliged entity , compliance with AML/CFT rules and shall facilitate supervision by supervisors, including by providing supervisors with documents and information on request.*
- 2. By [two years after the date of entry into force of this Directive], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall set out the criteria for determining the circumstances in which the appointment of a central contact point pursuant to paragraph 1 is appropriate, and the functions of the central contact points.*
- 3. The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in paragraph 2 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].*

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Article 32

Disclosure to FIUs

1. Member States shall ensure that if, in the course of the checks carried out on the obliged entities, or in any other way, supervisors discover facts that could be related to money laundering, *its predicate offences* or to terrorist financing, they shall promptly inform the FIU.
2. Member States shall ensure that supervisors empowered to oversee the stock, foreign exchange and financial derivatives markets, inform the FIU if they discover facts that could be related to money laundering or terrorist financing.
 - 2a. Member States shall ensure that compliance with the requirements set out in the first and second paragraph of this Article does not replace any obligation for supervisory authorities to report to the relevant competent authorities any criminal activity they uncover or become aware of in the context of their supervisory activities.*

Article 32a

Provision of information to FIUs

Member States shall ensure that supervisors communicate to the FIU at least the following information:

- (a) the list of establishments operating in that Member State and of infrastructure under their supervision pursuant to Article 29a(1) of this Directive, and of any changes to those lists;*
- (b) any relevant findings indicating serious weaknesses of the reporting systems of obliged entities;*
- (c) the results of the risk assessments performed pursuant to Article 31, in aggregated form.*

Article 33

General principles regarding supervisory cooperation

1. Member States shall ensure that supervisors cooperate with each other to the greatest extent possible, regardless of their respective nature or status. Such cooperation may include conducting, within the powers of the requested supervisor, inquiries on behalf of a requesting supervisor, and the subsequent exchange of the information obtained through such inquiries, *or facilitating the conduct of such enquiries by the requesting supervisor.*

Article 33a

Provision of information on cross-border activities

1. Member States shall ensure that the supervisors of the home Member State inform the supervisors of the host Member State as soon as possible, and in any case within three months of receiving a notification pursuant to Article 6a(1) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] of the activities that the obliged entity intends to carry out in the host Member State.

Any subsequent change notified to the supervisors of the home Member State pursuant to Article 6a(2) of that Regulation shall be notified to the supervisors of the host Member State as soon as possible and in any case within one month of receiving it.

2. Supervisors of the home Member State shall also share with the supervisors of the host Member State information on the activities effectively carried out by the obliged entity in the territory of the host Member State that they receive in the context of their supervisory activities, including information submitted by the obliged entities in response to supervisory questionnaires, and any relevant information connected to it.

The information referred to in the first subparagraph shall be exchanged at least annually. Where that information is provided in an aggregated form, Member States shall ensure that the supervisors of the home Member State respond promptly to any request for additional information by the supervisors of the host Member State.

By way of derogation from the second subparagraph, Member States shall ensure that supervisors of the home Member State inform the supervisors of the host Member State immediately upon receiving notification by obliged entities pursuant to Article 6a(1), first subparagraph, third sentence, of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] that activities in the host Member State have commenced.

Article 34

Provisions related to cooperation in the context of group supervision

1. In the case of credit and financial institutions that are part of a group, Member States shall ensure that, for the purposes laid down in Article 29(1), financial supervisors of the home Member State and those of the host Member State cooperate with each other to the greatest extent possible, regardless of their respective nature or status. They shall also cooperate with AMLA when it exercises supervisory functions in accordance with Article 5(2) of Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]* .
2. Except where AMLA exercises supervisory functions in accordance with Article 5(2) of Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]* , Member States shall ensure that the financial supervisors of the home Member State supervise the effective implementation of the group-wide policies, *[procedures and controls* referred to in *Chapter II, Section 2* of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*]. Member States shall also ensure that financial supervisors of the host Member State supervise the compliance of the establishments located in the territory of *their* Member State with the requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* , *Regulation [please insert reference to the Funds Transfer Regulation - 2021/0241(COD)]*, and with the national rules adopted by that Member State for the implementation of those regulations.

3. For the purposes of this Article, and except in cases where AML/CFT supervisory colleges are established in accordance with Article 36, Member States shall ensure that financial supervisors provide one another with any information they require for the exercise of their supervisory tasks, whether on request or on their own initiative. In particular, financial supervisors shall exchange any information that could significantly influence the assessment of the inherent or residual risk exposure of a credit or financial institution in another Member State, including:

(a) identification of the group's legal, governance and organisational structure, covering all subsidiaries and branches;

(aa) relevant information on the beneficial owners and senior management, including outcomes of fit and proper checks, whether carried out under this Directive or under other Union acts;

(b) **█ policies, procedures and internal controls █** in place within the group;

(ba) customer due diligence information, including customer files and records of transactions;

(c) adverse developments in relation to the parent undertaking, subsidiaries or branches, which could seriously affect other parts of the group;

(d) **█ pecuniary sanctions that financial supervisors intend to impose and administrative measures that financial supervisors intend to take** in accordance with Section 4 of this Chapter **█** .

Member States shall also ensure that financial supervisors are able to conduct, within their powers, inquiries on behalf of a requesting supervisor, and to share the information obtained through such inquiries, *or to facilitate the conduct of such enquiries by the requesting supervisor.*

4. By *[2 years after the date of entry into force of this Directive]* **█**, AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall detail the respective duties of the home and host supervisors, and the modalities of cooperation between them.

The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in the first sub-paragraph 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]* **█**.

5. Financial supervisors may refer to AMLA any of the following situations:

(a) where a financial supervisor has not communicated the information referred to in paragraph 3;

(b) where a request for cooperation has been rejected or has not been acted upon within a reasonable time.

(ba) where there is a disagreement on the basis of objective reasons on breaches identified and on the pecuniary sanctions or administrative measures to be imposed on the entity or group to remedy breaches identified.

AMLA may act in accordance with the powers conferred on it under **Article 30b** of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]. When doing so, AMLA shall provide its opinion on the subject-matter of the request within one month.

6. Member States shall ensure that the provisions of this Article also apply to the supervision of:

(a) groups of obliged entities **in the non-financial sector**;

(b) *obliged entities operating under the freedom to provide services without any infrastructure in another Member States than the Member State where they are established, where the supervision of activities in that other Member State is carried out by the supervisors of that other Member State pursuant to Article 29(1), second subparagraph.*

Where the situations referred to in paragraph 5 arise in relation to non-financial supervisors, AMLA may act in accordance with the powers conferred on it under Article 32a of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].

Member States shall also ensure that in cases where obliged entities **in the non-financial sector** are part of structures which share common ownership, management or compliance control, including networks or partnerships, **non-financial supervisors cooperate** and exchange information.

Article 34b

Supervisory cooperation regarding obliged entities carrying out cross-border activities

1. Where obliged entities that are not part of a group carry out cross-border activities as referred to in Article 39a(1) and supervision is shared between the supervisors of the home and host Member States pursuant to Articles 29(1) and 29a(1), Member States shall ensure that those supervisors cooperate with each other to the greatest extent possible and assist each other in the performance of supervision pursuant to Articles 29(1) and 29a(1).

For the purposes of the first subparagraph, and except in cases where AML/CFT supervisory colleges are established in accordance with Article 36, Member States shall ensure that supervisors:

(a) provide one another with any information they require for the exercise of their supervisory tasks, whether on request or on their own initiative, including the information referred to in Article 34(2), points (a), (b) and (d), where that information is necessary for the performance of supervisory tasks;

(b) inform one another of any adverse development in relation to the obliged entity, its establishments or types of infrastructure, which could seriously affect the entity's compliance with applicable requirements, and pecuniary sanctions or administrative measures they intend to take in accordance with Section 4 of this Chapter;

(c) are able to conduct, within their powers, inquiries on behalf of a requesting supervisor, and to share the information obtained through such inquiries, or to facilitate the conduct of such enquiries by the requesting supervisor.

The provisions of this paragraph shall also apply in the case of obliged entities that are established in a single Member State and operate under the freedom to provide services in another Member State without any infrastructure there, where the supervision of activities in that other Member State is carried out by the supervisors of that Member State pursuant to Article 29(1), second subparagraph.

2. Where supervision of the obliged entity and any of its types of infrastructure in other Member States is entrusted to the supervisors of the home Member State pursuant to Article 29a(2), Member States shall ensure that the supervisors of the home Member State inform regularly the supervisors of the host Member State of the measures in place within the obliged entity, and compliance of that entity with applicable requirements, including those in place in the host Member State. Where serious, repeated or systematic breaches are identified, the supervisors of the home Member State shall promptly inform the supervisors of the host Member State of those breaches and of any pecuniary sanctions it intends to impose and administrative measures it intends to take to remedy them.

Member States shall ensure that supervisors of the host Member State lend assistance to the supervisors of the home Member State to ensure the verification of compliance by the obliged entity with legal requirements. In particular, Member States shall ensure that supervisors of the host Member State inform the supervisors of the home Member State of any serious doubts that they have regarding compliance of the obliged entity with applicable requirements, and that they share any information they hold in this regard with the supervisors of the home Member State.

The provisions of this paragraph shall also apply in the case of obliged entities that are established in a single Member State and operate under the freedom to provide services in another Member State without any infrastructure, except for cases where the supervision of activities in that other Member State is carried out by the supervisors of that other Member State pursuant to Article 29(1), second subparagraph.

3. Supervisors may refer to AMLA any of the following situations:

(a) where a supervisor has not communicated the information referred to in paragraph 1, second subparagraph, points (a) and (b) or paragraph 2, first and second subparagraph;

(b) where a request for cooperation has been rejected or has not been acted upon within a reasonable time;

(c) where there is a disagreement on the basis of objective reasons on breaches identified and on the pecuniary sanctions or administrative measures to be imposed on the entity to remedy breaches identified.

AMLA may act in accordance with the powers conferred on it under Article 30b and 32a of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]. When doing so, AMLA shall provide its opinion on the subject-matter of the request within one month.

Article 35

Exchange of information in relation to implementation of group policies in third countries

Supervisors, including AMLA, shall inform each other of instances in which the law of a third country does not permit the implementation of the policies, controls and procedures required under Article 13 of Regulation [*please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final*]. In such cases, coordinated actions may be taken by supervisors to pursue a solution. In assessing which third countries do not permit the implementation of the policies, controls and procedures required under Article 13 of Regulation [*please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final*], supervisors shall take into account any legal constraints that may hinder proper implementation of those policies and procedures, including professional secrecy, an insufficient level of data protection and other constraints limiting the exchange of information that may be relevant for that purpose.

Section 2

■ **Cooperation within AML/CFT supervisory colleges and with counterparts in third countries**

Article 36

AML/CFT supervisory colleges *in the financial sector*

1. Member States shall ensure that dedicated AML/CFT supervisory colleges are established **by the financial supervisor in charge of the parent undertaking of a group of credit or financial institutions or of the head office of a credit or financial institution** in any of the following situations:

- (a) where a credit or financial institution, **including groups thereof**, has set up establishments in at least two different Member States other than the Member State where its head office is situated;
- (b) where a third-country credit or financial institution has set up establishments in at least three Member States.

1a. The permanent members of the college shall be:

(a) the financial supervisor in charge of the parent undertaking or of the head office;

(b) the financial supervisors in charge of establishments in host Member States;

(c) the financial supervisors in charge of infrastructure in host Member States pursuant to Article 29a.

1b. The provisions of this Article shall not apply where AMLA exercises supervisory functions in accordance with Article 5(2) of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].

1c. The activities of the AML/CFT supervisory colleges shall be proportionate to the level of the money laundering and terrorist financing risks to which the credit or financial institution or the group is exposed, and to the scale of its cross-border activities.

2. For the purposes of paragraph 1, Member States shall ensure that financial supervisors identify:

(a) all credit **■** *or* financial institutions **■** *that have been authorised in their Member State and that have* **■** *establishments in other Member* **■** *States or third countries;*

(b) all establishments set up by those institutions in other **■** *Member States or third countries;*

(c) establishments set up in their territory by credit **■** *or* financial institutions from other Member States or third countries.

2a. In situations other than those covered by Article 29a, where credit or financial institutions carry out activities in other Member States under the freedom to provide services, the financial supervisor of the home Member State may invite the financial supervisors of those Member States to participate in the college as observers.

2b. Where a group of credit or financial institutions includes any of the obliged entities under Article 3(3) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], the financial supervisor setting up the college shall invite the supervisors of those obliged entities to participate in the college.

3. Member States may allow the establishment of AML/CFT supervisory colleges when a credit or financial institution established in the Union has set up establishments in at least two third countries. Financial supervisors may invite their counterparts in those third countries to set up such college. The financial supervisors participating in the college shall establish a written agreement detailing the conditions and procedures of the cooperation and exchange of information.

4. **Member States shall ensure that colleges are used, among others,** for exchanging information, providing mutual assistance or coordinating the supervisory approach to the **group or institution**, including, where relevant, the taking of appropriate and proportionate measures to address serious breaches of the requirements of Regulation [*please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final*], Regulation [*please insert reference to the Funds Transfer Regulation - 2021/0241(COD)*], and of national rules adopted by the Member States for the implementation of those regulations that are detected **at the level of the group or of the credit or financial institution or** across the establishments set up by the **group or institution** in the jurisdiction of a supervisor participating in the college.

5. AMLA **may** attend the meetings of the AML/CFT supervisory colleges and shall facilitate their work in accordance with Article 29 of Regulation [*please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final*]. **Where AMLA decides to participate in the meetings of an AML/CFT supervisory college, it shall have the status of an observer.**

5a. Financial supervisors may allow their counterparts in third countries to participate as observers in AML/CFT supervisory colleges in the case referred to in paragraph 1, point (b) or where Union groups or credit or financial institutions operate branches and subsidiaries in those third countries, provided that:

- (a) the third-country counterparts submit a request for participation and the members of the college agree with their participation, or the members of the college agree to invite those third-country counterparts;*
- (b) Union data protection rules concerning data transfers are complied with;*
- (c) the third-country counterparts sign the written agreement referred to in paragraph 3, third sentence, and share within the college the relevant information they possess for the supervision of the credit or financial institutions or of the group;*
- (d) the information disclosed is subject to a guarantee of professional secrecy requirements at least equivalent to that referred to in Article 50(1) and is used solely for the purposes of performing the supervisory tasks of the participating financial supervisors or of the counterparts in third countries.*

Member States shall ensure that financial supervisors setting up the colleges carry out an assessment of whether the conditions of the first subparagraph are met and submit it to the permanent members of the college. That assessment shall be carried out prior to the third-country counterpart being allowed to join the college and may be repeated as necessary thereafter. The financial supervisors of the home Members may seek the support of AMLA for the performance of that assessment.

5b. Where deemed necessary by the permanent Members of the college, additional observers may be invited, provided that confidentiality requirements are complied with. Observers may include prudential supervisors, including the European Central Bank acting in accordance with Regulation (EU) 1024/2013, as well as the European Supervisory Authorities and FIUs.

5c. Where the members of a college disagree on the measures to be taken in relation to an obliged entity, they may refer the matter to AMLA and request its assistance in accordance with Article 30b of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].

6. By [2 year after the date of entry into force of this Directive], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify:

- (a) the general conditions for the functioning, *on a risk-sensitive basis*, of the AML/CFT supervisory colleges, including the terms of cooperation between **permanent members and with observers**, and the operational functioning of such colleges;
- (b) *the template for the written agreement to be signed by financial supervisors pursuant to paragraph 3, third sentence of this Article;*
- (c) *any additional measure to be implemented by the colleges when groups include obliged entities covered under Article 3(3) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final];*
- (d) *conditions for the participation of financial supervisors in third countries.*

The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph 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 36a

AML/CFT supervisory colleges in the non-financial sector

1. Member States shall ensure that the non-financial supervisors in charge of the parent undertaking of a group of obliged entities in the non-financial sector or of the head office of an obliged entity in the non-financial sector are able to set up dedicated AML/CFT supervisory colleges in any of the following situations:

(a) where an obliged entity in the non-financial sector, or a group thereof, has set up establishments in at least two different Member States other than the Member State where its head office is situated;

(b) where a third-country entity subject to AML/CFT requirements other than a credit or financial institution has set up establishments in at least three Member States.

The provisions of this paragraph shall also apply to structures which share common ownership, management or compliance control, including networks or partnerships to which group-wide requirements apply pursuant to Article 13 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].

The permanent members of the college shall be:

- (a) the non-financial supervisor in charge of the parent undertaking or of the head office;*
- (b) the non-financial supervisors in charge of establishments in host Member States or of supervision of that obliged entity in other Member States in the cases covered by Article 29(1), second subparagraph.*

2. Member States shall ensure that where the non-financial supervisor in charge of the parent undertaking of a group or of the office of an obliged entity does not set up a college, non-financial supervisors referred to in paragraph 1, second subparagraph, point (b) can submit an opinion that, having regard to the money laundering and terrorist financing risks to which the obliged entity or group is exposed and the scale of its cross-border activities, a college should be set up. That opinion shall be submitted by at least two non-financial supervisors and addressed to:

- (a) the non-financial supervisor in charge of the parent undertaking of a group or of the office of an obliged entity;*
- (b) AMLA;*

(c) all other non-financial supervisors;

(d) where the non-financial supervisor referred to under point (a) is a self-regulatory body, the public authority in charge of overseeing that self-regulatory body pursuant to Article 38.

3. Where, after an opinion is submitted pursuant to paragraph 2, the non-financial supervisor in charge of the parent undertaking of a group or of the office of an obliged entity still considers that it is not necessary to set up a college, Member States shall ensure that the other non-financial supervisors are able to set up the college, provided that it is composed of at least two members. In those cases, those non-financial supervisors shall decide among them who is the supervisor in charge of the college. The non-financial supervisor in charge of the parent undertaking of a group or of the office of an obliged entity shall be informed of the activities of the college and be able to join the college at any time.

4. For the purposes of paragraph 1, Member States shall ensure that non-financial supervisors identify:

- (a) all obliged entities in the non-financial sector that have their head office in their Member State and that have establishments in other Member States or third countries;*
- (b) all establishments set up by those obliged entities in other Member States or third countries;*
- (c) establishments set up in their territory by obliged entities in the non-financial sector from other Member States or third countries.*

5. Where obliged entities in the non-financial sector carry out activities in other Member States under the freedom to provide services, the non-financial supervisor of the home Member State may invite the non-financial supervisors of those Member States to participate in the college as observers.

6. Where a group in the non-financial sector includes any credit or financial institution, but their presence in the group does not meet the threshold for setting up a college pursuant to Article 36, the supervisor setting up the college shall invite the financial supervisors of those credit or financial institutions to participate in the college.

7. Member States may allow the establishment of AML/CFT supervisory colleges when an obliged entity in the non-financial sector established in the Union has set up establishments in at least two third countries. Non-financial supervisors may invite their counterparts in those third countries to set up such college. The non-financial supervisors participating in the college shall establish a written agreement detailing the conditions and procedures of the cooperation and exchange of information.

Where the college is set up in relation to obliged entities referred to in Article 3(3), points (a) and (b) or groups thereof, the written agreement referred to in the first subparagraph shall also include procedures to ensure that no information collected pursuant to Article 17(1) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] is shared, unless the third subparagraph of that paragraph applies.

8. Member States shall ensure that colleges are used, among others, for exchanging information, providing mutual assistance or coordinating the supervisory approach to the group or obliged entity, including, where relevant, the taking of appropriate and proportionate measures to address serious breaches of the requirements of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], Regulation [please insert reference to the Funds Transfer Regulation - 2021/0241(COD)], and of national rules adopted by the Member States for the implementation of those regulations that are detected at the level of the group or of the obliged entity, or across the establishments set up by the group or obliged entity in the jurisdiction of a supervisor participating in the college.

9. AMLA may attend the meetings of the AML/CFT supervisory colleges and shall facilitate their work in accordance with Article 31a of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]. Where AMLA decides to participate in the meetings of an AML/CFT supervisory college, it shall have the status of an observer.

10. Non-financial supervisors may allow their counterparts in third countries to participate in AML/CFT supervisory colleges as observers in the case referred to in paragraph 1, point (b) or where Union obliged entities in the non-financial sector or groups thereof operate branches and subsidiaries in those third countries, provided that:

(a) the third-country counterparts submit a request for participation and the members of the college agree with their participation, or the members of the college agree to invite those third-country counterparts;

(b) Union data protection rules concerning data transfers are complied with;

(c) the third-country counterparts sign the written agreement referred to in paragraph 6, third sentence, and share within the college the relevant information they possess for the supervision of the obliged entity or of the group;

(d) the information disclosed is subject to a guarantee of professional secrecy requirements at least equivalent to that referred to in Article 50(1) and is used solely for the purposes of performing the supervisory tasks of the participating non-financial supervisors or of the counterparts in third countries.

Member States shall ensure that non- financial supervisors in charge of the parent undertaking of a group or of the head office of an obliged entity or, in the cases covered by paragraph 3, of the college carry out an assessment of whether the conditions of the first subparagraph are met and submit it to the permanent members of the college. That assessment shall be carried out prior to the third-country counterpart being allowed to join the college and may be repeated as necessary thereafter.

The non-financial supervisors in charge of the assessment may seek the support of AMLA for its performance.

11. Where deemed necessary by the permanent Members of the college, additional observers may be invited, provided that confidentiality requirements are complied with. Observers may include FIUs.

12. Where the members of a college disagree on the measures to be taken in relation to an obliged entity, they may refer the matter to AMLA and request its assistance in accordance with Article 32a of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]. AMLA shall provide its opinion on the matter of disagreement within two months.

13. By [2 year after the date of entry into force of this Directive], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify:

(a) the general conditions for the functioning of the AML/CFT supervisory colleges in the non-financial sector, including the

terms of cooperation between permanent members and with observers, and the operational functioning of such colleges;

(b) the template for the written agreement to be signed by non-financial supervisors pursuant to paragraph 3, third sentence of

this Article;

(c) conditions for the participation of non-financial supervisors in third countries;

(d) any additional measure to be implemented by the colleges when groups include credit or financial institutions.

14. By [2 years after the date of transposition of this Directive] and every two years thereafter, AMLA shall issue an opinion on the functioning of AML/CFT supervisory colleges in the non-financial sector. That opinion shall include:

(a) an overview of the colleges set up by non-financial supervisors;

(b) an assessment of the actions taken by those colleges and the level of cooperation attained, including difficulties faced in the functioning of the colleges.

Article 37

Cooperation with ■ supervisors in third countries

1. Member States ■ **shall ensure that** supervisors **are able** to conclude cooperation agreements providing for collaboration and exchanges of confidential information with their counterparts in third countries. Such cooperation agreements shall comply with applicable data protection rules ■ and be concluded on the basis of reciprocity and ■ subject to a guarantee of professional secrecy requirements at least equivalent to that referred to in Article 50(1). Confidential information exchanged in accordance with those cooperation agreements shall be used for the purpose of performing the supervisory tasks of those authorities only.

Where the information exchanged originates in another Member State, it shall only be disclosed with the explicit consent of the [] supervisor which shared it and, where appropriate, solely for the purposes for which that supervisor gave its consent.

2. For the purposes of paragraph 1, AMLA [] **shall** lend such assistance as [] necessary to assess the equivalence of professional secrecy requirements applicable to the third country counterpart.

3. Member States shall ensure that [] supervisors notify any agreement signed pursuant to this Article to AMLA within one month of its signature.

3a. By [5 years after the entry into force of this directive], AMLA shall develop draft implementing technical standards and submit them to the Commission for adoption. Those draft implementing technical standards shall specify the template to be used for the conclusion of cooperation agreements referred to in paragraph 1.

3b. The Commission is empowered to adopt the implementing technical standards referred to in paragraph 4 of this Article in accordance with Article 42 of Regulation ... [please insert reference to AMLA Regulation - 2021/0240 (COD)].

Section 3

Specific provisions relating to self-regulatory bodies

Article 38

Oversight of self-regulatory bodies

1. Where Member States decide, pursuant to Article 29(3), to allow self-regulatory bodies to perform supervision of the entities referred to in Article 3, points (3)(a), **■ and (b)**, of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], they shall ensure that the activities of such self-regulatory bodies in the performance of such functions are subject to oversight by a public authority.

■

2. The authority overseeing self-regulatory bodies shall be responsible for ***ensuring an adequate and effective supervisory system for the obliged entities referred to in the first paragraph, including by:***

(a) verifying that any self-regulatory body performing the functions or aspiring to perform the functions referred to in Article 29(1) satisfies the requirements of paragraph 3 of that Article;

(b) issuing guidance as regards the performance of the functions referred to in Article 29(1);

(c) ensuring that self-regulatory bodies perform their functions under Section 1 of this Chapter **adequately and effectively**;

(d) reviewing the exemptions granted by self-regulatory bodies from the obligation to draw up an individual documented risk assessment pursuant to Article 29(4), point (b).

(da) regularly informing self-regulatory bodies of any activity planned or task carried out by AMLA that is relevant for the performance of their supervisory function, and in particular the planning of peer reviews in accordance with Article 31 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]

3. Member States shall ensure that the authority overseeing self-regulatory bodies is granted adequate powers to discharge its responsibilities under paragraph 2. As a minimum, Member States shall ensure that the authority has the power to:

- (a) compel the production of any information that is relevant to monitoring compliance and performing checks, except for any information collected by obliged entities referred to in Article 3, points (3)(a), **and (b)**, of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] in the course of ascertaining the legal position of their client, **subject to the conditions of article 17(1a) of that Regulation**, or for performing the task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings; whether such information was collected before, during or after such proceedings;
- (b) issue instructions to a self-regulatory body for the purpose of remedying a failure to perform its functions under Article 29(1) or to comply with the requirements of paragraph **5** of that Article, or to prevent any such failures. When issuing such instructions, the authority shall consider any relevant guidance it provided or that has been provided by AMLA.

3a. Member States shall ensure that the authorities overseeing self-regulatory bodies perform their functions free of undue influence.

Member States shall also ensure that the staff of the authorities overseeing self-regulatory bodies are bound by professional secrecy requirements equivalent to those laid out in Article 50, and that they maintain high professional standards, including high professional standards of confidentiality and data protection, and are of high integrity. Member States shall ensure that the authorities overseeing self-regulatory bodies have in place procedures to prevent and manage conflicts of interest.

3b. Member States may provide for effective, proportionate and dissuasive measures or sanctions for failures by self-regulatory bodies to comply with any request or instruction or other measure taken by the authority pursuant to paragraphs 2 or 3.

4. Member States shall ensure that the authority overseeing self-regulatory bodies informs the authorities competent for investigating and prosecuting criminal activities timely, directly or through the FIU, of any breaches which are subject to criminal sanctions that it detects in the performance of its tasks.

5. The authority overseeing self-regulatory bodies shall publish an annual report containing information about:

- (a) the number and nature of breaches detected by each self-regulatory body and the administrative measures or sanctions imposed on obliged entities;
- (b) the number of suspicious transactions reported by the entities subject to supervision by each self-regulatory body to the FIU, whether submitted directly pursuant to Article 50(1) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], or forwarded by each self-regulatory body to the FIU pursuant to Article 51(1) of that Regulation;

(c) the number and description of measures taken under Article 40 by each self-regulatory body to monitor compliance by obliged entities with the requirements of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] referred to in Article 40(1);

(d) the number and description of measures taken by the authority overseeing self-regulatory bodies under this Article and the number of instructions issued to self-regulatory bodies.

Such report shall be made available on the website of the authority overseeing self-regulatory bodies and submitted to the Commission and AMLA.

Section 4

Pecuniary sanctions and *administrative* measures

Article 39

General provisions

1. Member States shall ensure that obliged entities can be held liable for breaches of the Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* in accordance with this Section.
2. Without prejudice to the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules on *pecuniary* sanctions and *administrative* measures and ensure that supervisors may impose such *pecuniary* sanctions and *administrative* measures with respect to breaches of *Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] or [please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final]* and shall ensure that they are applied. Any resulting sanction or measure imposed pursuant to this Section shall be effective, proportionate and dissuasive.

2a. By way of derogation from paragraph 2, where the legal system of the Member State does not provide for administrative sanctions, this Article may be applied in such a manner that the pecuniary sanction is initiated by the supervisor and imposed by judicial authorities, while ensuring that those legal remedies are effective and have an equivalent effect to the pecuniary sanctions imposed by supervisors. In any event, the pecuniary sanctions imposed shall be effective, proportionate and dissuasive. Those Member States shall notify to the Commission the provisions of their laws which they adopt pursuant to this paragraph by [please insert date - date of transposition of this Directive] and, without delay, any subsequent amendment law or amendment affecting them.

3. In the event of a breach of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], Member States shall ensure that where obligations apply to legal persons, **pecuniary** sanctions and **administrative** measures can be applied **not only to the legal person, but also** to the senior management and to other natural persons who under national law are responsible for the breach.

Member States shall ensure that where supervisors identify breaches which are subject to criminal sanctions, they inform the authorities competent for investigating and prosecuting criminal activities in a timely manner.

4. **Pecuniary sanctions and administrative** measures in accordance with this Directive and with national law **shall be imposed** in any of the following ways:

- (a) directly **by the supervisors**;
- (b) in collaboration **between the supervisors and** other authorities;
- (c) under **the** responsibility **of the supervisors** by delegation to such other authorities;
- (d) by application **by the supervisors** to the competent judicial authorities.

By **[3 months after the deadline for transposition of this Directive]**, Member States shall notify to the Commission and AMLA the information as regards the arrangements relating to the imposition of **pecuniary** sanctions or **administrative** measures pursuant to this paragraph, including, where relevant, information whether certain sanctions or measures require the recourse to a specific procedure.

5. Member States shall ensure that, when determining the type and level of **pecuniary** sanctions or **administrative** measures, supervisors take into account all relevant circumstances, including where applicable:

- (a) the gravity and the duration of the breach;
- (aa) the number of instances of the same breach;*
- (b) the degree of responsibility of the natural or legal person held responsible;
- (c) the financial strength of the natural or legal person held responsible, including in light of its total turnover or annual income;
- (d) the benefit derived from the breach by the natural or legal person held responsible, insofar as it can be determined;
- (e) the losses to third parties caused by the breach, insofar as they can be determined;
- (f) the level of cooperation of the natural or legal person held responsible with the competent authority;
- (g) previous breaches by the natural or legal person held responsible.

■

5a. Member States shall ensure that legal persons can be held liable for the breaches of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] or [proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final] committed on their behalf or for their benefit by any person, acting individually or as part of a body of that legal person and having a leading position within the legal person, based on any of the following:

- (a) a power to represent the legal person;*
- (b) an authority to take decisions on behalf of the legal person;*
- (c) an authority to exercise control within the legal person.*

5b. Member States shall ensure that legal persons can be held liable where the lack of supervision or control by the persons referred to in paragraph 5 of this Article has made possible the commission of the breaches of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] or [proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final] committed on their behalf or for their benefit by a person under its authority.

6. In the exercise of their powers to impose **pecuniary** sanctions and *administrative* measures, supervisors shall cooperate closely *and, where relevant, coordinate their actions with other authorities as appropriate*, in order to ensure that those **pecuniary** sanctions or *administrative* measures produce the desired results and coordinate their action when dealing with cross-border cases.

7. By [2 years after the date of entry into force of this Directive], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall define:

- (a) indicators to classify the level of gravity of breaches **;**
- (b) criteria to be taken into account when setting the level of **pecuniary** sanctions or taking administrative measures pursuant to this Section;
- (c) *a methodology for the application of periodic penalty payments pursuant to Article 41a, including their frequency.*

The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph 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]* **.**

8. By [2 years after the date of entry into force of this Directive], AMLA shall issue guidelines on the base amounts for the imposing of pecuniary sanctions relative to turnover, broken down per type of breach and category of obliged entities.

Article 39a

Supervisory measures towards establishments of obliged entities and certain activities carried out under the freedom to provide services

- 1. In the case of establishments of obliged entities that do not as such qualify as credit or financial institutions pursuant to Article 2, points (5) and (6) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] or of types of infrastructure of obliged entities over which the supervisor of the host Member State exercises supervision pursuant to Article 29a(1), the provisions of paragraphs 2 to 5 shall apply.*
- 2. Where the supervisors of the host Member State identify breaches of requirements, they shall request the obliged entities operating through the establishments or types of infrastructure as referred to in paragraph 1 to comply with the applicable requirements and inform the supervisors of the home Member State of the breaches identified within that obliged entity and of the request to comply.*

3. Where the obliged entities fail to take the necessary action, the supervisors of the host Member State shall inform the supervisors of the home Member State accordingly.

The supervisors of the home Member State shall act promptly and take all appropriate measures to ensure that the obliged entity concerned remedies the breaches detected in its establishments or types of infrastructure in the host Member State. The supervisors of the home Member State shall inform the supervisors of the host Member State of any actions taken pursuant to this paragraph.

4. By way of derogation from paragraph 3 and in addition to paragraph 2, in situations of serious, repeated or systematic breaches by obliged entities operating through establishments or other types of infrastructure in their territory as referred to in paragraph 1 that require immediate remedies, supervisors of the host Member State shall be allowed at their own initiative to take appropriate and proportionate measures to address those serious breaches. Those measures shall be temporary and be terminated when the breaches identified are addressed, including with the assistance of or in cooperation with the supervisors of the home Member State of the obliged entity.

Member States shall ensure that the supervisors of the host Member State inform the supervisor of the home Member State of the obliged entity immediately upon identification of the serious, repeated or systematic breaches and upon the imposition of any measure pursuant to the first subparagraph of this paragraph, unless measures are imposed in cooperation with the supervisors of the home Member State.

5. Where the supervisors of the home and host Member States disagree on the measures to be taken in relation to an obliged entity, they may refer the matter to AMLA and request its assistance in accordance with Article 30b and 32a of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]. AMLA shall provide its opinion on the matter of disagreement within one month.

■ Pecuniary sanctions

1. Member States shall ensure that **■ pecuniary** sanctions are **■ imposed** to obliged entities for serious, repeated or systematic breaches, *whether committed intentionally or negligently*, **■** of the requirements laid down in the following provisions of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*:**■**

- (a) Chapter **■ II** (*internal policies, procedures and controls of obliged entities*);
- (b) Chapter **■ III** (*customer due diligence*);
- (c) **■ Chapter V** (*reporting obligations*);
- (d) **■ Article 56** (*record-retention*).

(da) Member States shall also ensure that pecuniary sanctions can be imposed where obliged entities do not comply with administrative measures applied to them pursuant to Article 41 or for breaches that are not serious, repeated or systematic.

2. Member States shall ensure that in the cases referred to in paragraph 1, *first subparagraph*, the maximum **■** pecuniary sanctions that can be **■ imposed** amount at least to twice the amount of the benefit derived from the breach where that benefit can be determined, or at least EUR 1 000 000, *whichever is higher*.

For Member States whose currency is not the euro, the value referred to in the first subparagraph shall be the corresponding value in the national currency on [please insert date of entry into force of this Directive].

3. Member States shall ensure that, by way of derogation from paragraph 2, where the obliged entity concerned is a credit institution or financial institution, the following sanctions can also be applied:

(a) in the case of a legal person, maximum pecuniary sanctions of at least EUR 10 000 000 or, *in the Member States whose currency is not the euro, the corresponding value in the national currency on [please insert date of entry into force of this Directive], or 10%* of the total annual turnover according to the latest available accounts approved by the management body, *whichever is higher*; where the obliged entity is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Article 22 of Directive 2013/34/EU of the European Parliament and of the Council³⁴, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting regime according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;

³⁴ 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. 19).

(b) in the case of a natural person, maximum █ pecuniary sanctions of at least EUR 5 000 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on *[please insert the date of entry into force of this Directive]* █ .

4. Member States may empower competent authorities to impose █ pecuniary sanctions exceeding the amounts referred to in paragraphs 2 and 3.

█

5. Member States shall ensure that, when determining the amount of the pecuniary sanction, the ability of the entity to pay the sanction is taken into account and that, where the pecuniary sanction may affect compliance with prudential regulation, supervisors consult the authorities competent to supervise compliance by the obliged entities with relevant Union acts.

Administrative measures

1. **Member States shall ensure that supervisors are able to impose administrative measures on an obliged entity where they identify:**

(a) breaches of requirements of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] or Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final], either in combination with pecuniary sanctions for serious, repeated and systematic breaches, or on their own;

(b) weaknesses in the internal policies, procedures and controls of the obliged entity that are likely to result in breaches of the requirements referred to in point (a) and administrative measures can prevent the occurrence of those breaches or reduce the risk thereof;

(c) that the internal policies, procedures and controls in place in the obliged entity are not commensurate to the risks of money laundering, its predicate offences or terrorist financing to which the entity is exposed.

Member States shall ensure that the supervisors are able at least to:

- (a) issue recommendations;
- (b) order obliged entities to comply, including to implement specific corrective measures;
- (c) issue a public statement which identifies the natural or legal person and the nature of the breach;
- (d) issue an order requiring the natural or legal person to cease the conduct and to desist from repetition of that conduct;
- (da) restrict or limit the business, operations or network of institutions comprising the obliged entity, or to require the divestment of activities***
- (e) where an obliged entity is subject to an authorisation, withdraw or suspend the authorisation;
- (f) **■ *require changes in the governance structure.***

2. When taking the administrative measures referred to in paragraph 1, supervisors shall be able to:

(a) **require the provision of any data or information necessary for the fulfilment of their tasks pursuant to this Chapter without undue delay, to require submission of any document, or impose additional or more frequent reporting requirements** ;

(b) require the reinforcement of the **internal policies, procedures and controls**;

(c) require the obliged entity to apply a specific policy or requirements relating to **categories of or individual clients, transactions, activities or delivery channels** that pose high risks;

(d) require the implementation of measures to bring about the reduction of the money laundering or terrorist financing risks inherent in the activities and products of the obliged entity.

(da) impose a temporary ban against any person discharging managerial responsibilities in an obliged entity, or any other natural person, held responsible for the breach, from exercising managerial functions in obliged entities.

3. The administrative measures referred to in paragraph 1 shall be accompanied, **where relevant, by binding deadlines** for their implementation. Member States shall ensure that supervisors follow up and assess the implementation by the obliged entity of the actions requested.

4. Member States may empower supervisors to impose additional types of administrative measures to those referred to in paragraph 1.

Article 41a

Periodic penalty payments

- 1. Member States shall ensure that, where obliged entities fail to comply with administrative measures applied by the supervisor pursuant to points (b), (d), (da) and (f) of Article 41(1) within the deadlines set, supervisors are able to impose periodic penalty payments in order to compel compliance with those administrative measures.*
- 2. The periodic penalty payments shall be effective and proportionate. The periodic penalty payments shall be imposed until the obliged entity or person concerned complies with the relevant administrative measures.*
- 3. Notwithstanding paragraph 2, the amount of a periodic penalty payment shall not exceed 3 % of the average daily turnover in the preceding business year or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year.*
- 4. Periodic penalty payments may be imposed for a period of no more than six months following the supervisor's decision. Where, upon expiry of that period, the obliged entity has not yet complied with the administrative measure, Member States shall ensure that supervisors can apply periodic penalty payments for an additional period of no more than six months.*
- 5. Member States shall ensure that a decision imposing a periodic penalty payment may be taken as of the date of the date of the application of the administrative measure.*

The periodic penalty payment shall apply as of the date when that decision is imposed.

Article 42

Publication of *pecuniary sanctions*, administrative *measures and periodic penalty payments*

1. Member States shall ensure that supervisors *publish* on their official website, *in an accessible format, decisions imposing pecuniary sanctions, administrative measures referred to under Article 41(1), second subparagraph, points (c) to (f) taken pursuant to Article 41(1), first subparagraph point (a) or periodic penalty payments.*

1a. Member States shall ensure that the decision referred to in paragraph 1 is published by the supervisor immediately after the person sanctioned is informed of that decision.

By way of derogation from the first subparagraph, where the publication concerns administrative measures against which there is an appeal and that do not aim to remedy serious, repeated and systematic breaches, Member States may allow deferring the publication of those administrative measures until expiry of the deadline for lodging an appeal.

Where the publication refers to of decisions against which there is an appeal, supervisors shall also publish, immediately, on their official website such information and any subsequent information on an appeal, and the outcome of such appeal. Any decision annulling a previous decision to impose a pecuniary sanction, an administrative measure, or a periodic penalty payment, shall also be published.

1b. The publication shall include at least information on the type and nature of the breach and the identity of the persons responsible, as well as, for pecuniary sanctions and periodic penalty payments, their amounts. Member States shall not be obliged to apply this subparagraph to decisions imposing measures that are of an investigatory nature, or which are taken pursuant to Article 41(1), points (a) and (c).

Where the publication of the identity of the persons responsible as referred to in the first **■ paragraph** or the personal data of such persons is considered by the supervisors to be disproportionate following a case-by-case assessment, or where publication jeopardises the stability of financial markets or an on-going investigation, supervisors shall **■** :

- (a) delay the publication of the decision **■** until the moment at which the reasons for not publishing it cease to exist;
- (b) publish the decision **■** on an anonymous basis in a manner in accordance with national law, if such anonymous publication ensures an effective protection of the personal data concerned; in that case, the publication of the relevant data may be postponed for a reasonable period of time if it is provided that within that period the reasons for anonymous publication shall cease to exist;

(c) not publish the decision ■ at all in the event that the options set out in points (a) and (b) are considered insufficient to ensure one of the following:

- (i) that the stability of financial markets would not be put in jeopardy;
- (ii) the proportionality of the publication of the decision with regard to *pecuniary sanctions and administrative measures for breaches* which are deemed to be of a minor nature.

2. ■ Member States ■ *shall ensure that any publication in accordance with this Article remains on the official website of the supervisors for a period of five years after its publication. However, personal data contained in the publication shall only be kept* ■ on the ■ *official website of the competent authority for the period which is necessary in accordance with the applicable data protection rules and in any case for no more than 5 years.*

■

■ Reporting of breaches and protection of reporting persons

1. ■ Directive (EU) 2019/1937 applies to the reporting of breaches of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847] and of this Directive, and to the protection of persons reporting such breaches and of the persons concerned by those reports■ .

■

2. Supervisory authorities shall be authorities competent to establish external reporting channels and to follow-up on reports insofar as requirements applicable to obliged entities are concerned, in accordance with Directive (EU) 2019/1937.

2a. The oversight bodies■ referred to in ■ article 38 shall ■ be authorities competent to establish external reporting channels and to follow up on reports by self-regulatory bodies and their staff insofar as requirements applicable to self-regulatory bodies in the exercise of supervisory functions are concerned.

■

2a. Member States shall ensure that supervisory authorities in the non-financial sector report, on an annual basis, to AMLA:

(a) the number of reports received pursuant to paragraph 1 and information on the share of reports that have been or are in the process of being followed-up, including whether they have been closed or are still open, and of the reports that have been dismissed;

(b) the types of irregularities reported;

(c) where reports have been followed-up, a description of the actions taken by the supervisor and, for reports that are still open, that the supervisor plans to take;

(d) where reports have been dismissed, the reasons for such a dismissal to such reports.

The report referred to in the first subparagraph shall not contain any information on the identity or occupation of the reporting persons, or any other information that may lead to their identification.

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Article 44

Exchange of information on sanctions

1. Member States shall ensure that their supervisors and, where relevant, the national authority overseeing self-regulatory bodies in their performance of supervisory functions inform AMLA of all **pecuniary** sanctions and **administrative** measures imposed in accordance with this Section, including of any appeal in relation thereto and the outcome thereof. Such information shall also be shared with other supervisors when the administrative sanction or measure concerns an entity operating in two or more Member States.
2. AMLA shall maintain on its website links to each supervisor's publication of **pecuniary** sanctions and **administrative** measures imposed in accordance with Article 42, and shall show the time period for which each Member State publishes administrative sanctions and measures.

CHAPTER V

COOPERATION

Section 1

AML/CFT cooperation

Article 45

General provisions

1. Member States shall ensure that policy makers, the FIUs, supervisors, including AMLA, and other competent authorities, as well as tax authorities have effective mechanisms to enable them to cooperate and coordinate domestically concerning the development and implementation of policies and activities to combat money laundering and terrorist financing and to prevent the non-implementation and evasion of **█** targeted financial sanctions, including with a view to fulfilling their obligations under Article 8.

█

2. With regard to beneficial ownership information obtained by competent authorities pursuant to Chapter IV of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* **█** and Section I of Chapter II of this Directive, Member States shall ensure that competent authorities are able to provide such information to the *counterpart* competent authorities of other Member States or third countries in a timely manner and free of charge.

3. Member States shall not prohibit or place unreasonable or unduly restrictive conditions on the exchange of information or assistance between competent authorities *and their counterparts* for the purposes of this Directive. Member States shall ensure that competent authorities do not refuse a request for assistance on the grounds that:

- (a) the request is also considered to involve tax matters;
- (b) national law requires obliged entities to maintain secrecy or confidentiality, except in those cases where the relevant information that is sought is protected by legal privilege or where legal professional secrecy applies, as provided for in Article 51(2) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final];
- (c) there is an inquiry, investigation, *proceeding or FIU analysis* underway in the requested Member State, unless the assistance would impede that inquiry, investigation, *proceeding or FIU analysis* ;
- (d) the nature or status of the requesting counterpart competent authority is different from that of requested competent authority.

■

Article 46

Communication of the list of the competent authorities

1. In order to facilitate and promote effective cooperation, and in particular the exchange of information, Member States shall communicate to the Commission and AMLA:

(a) the list of supervisors responsible for overseeing the compliance of the obliged entities with the requirements of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], as well as, where relevant, name of the public authority overseeing self-regulatory bodies in their performance of supervisory functions under this Directive, and their contact details;

(b) the contact details of their FIU;

■

(c) the list of other competent national authorities.

2. For the purposes of paragraph 1, the following contact details shall be provided:

(a) ***a contact point or, failing that***, the name and role of the contact person;

(b) ***the email and phone number of the contact point or, failing that***, the professional email address and phone number of the contact person.

3. Member States shall ensure that the information provided to the Commission and AMLA pursuant to paragraph 1 is updated as soon as a change takes place.

4. AMLA shall publish a register of the authorities referred to in paragraph 1 on its website and facilitate the exchange of information referred to in paragraph 2 between competent authorities. The authorities in the register shall, within the scope of their powers, serve as a contact point for the counterpart competent authorities. FIUs and supervisory authorities shall also serve as a contact point for AMLA.

Article 47

Cooperation with AMLA

FIU and supervisory authorities shall cooperate with AMLA and shall provide it with all the information necessary to allow it to carry out its duties under this Directive, under Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* and under Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]* .

Section 2

Cooperation with other authorities and exchange of confidential information

Article 48

Cooperation in relation to credit *or financial* institutions

1. Member States shall ensure that financial supervisors, FIUs and authorities competent for the supervision of credit *or financial* institutions under other legal acts cooperate closely with each other within their respective competences and provide each other with information relevant for the performance of their respective tasks. Such cooperation and information exchange shall not impinge on an ongoing inquiry, *FIU's analysis*, investigation or proceedings in accordance with the criminal or administrative law of the Member State where the financial supervisor or authority entrusted with competences for the supervision of credit *or financial* institutions under other legal acts is located and shall not affect obligations of professional secrecy as provided in Article 50(1).
2. Member States shall ensure that, where financial supervisors identify weaknesses in the AML/CFT internal control system and application of the requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* of a credit institution which materially increase the risks to which the institution is or might be exposed, the financial supervisor immediately notifies the European Banking Authority (EBA) and the authority or body that supervises the credit institution in accordance with Directive (EU) 2013/36, including the ECB acting in accordance with Council Regulation (EU) 1024/2013³⁵.

³⁵ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

In the event of potential increased risk, financial supervisors shall be able to **cooperate and share information** with the authorities supervising the institution in accordance with Directive (EU) 2013/36 and draw up a common assessment to be notified to EBA **by the supervisor who first sent the notification**. AMLA shall be kept informed of any such notifications.

3. Member States shall ensure that, where financial supervisors find that a credit institution has refused to enter into **or decided to terminate** a business relationship but the documented customer due diligence pursuant to Article 17(2) does not justify such refusal, they shall inform the authority responsible for ensuring compliance by that institution with Directive (EU) 2014/92 or Directive (EU) 2015/2366.

4. Member States shall ensure that financial supervisors cooperate with resolution authorities as defined in Article **2(1)**(18) of Directive 2014/59/EU or designated authorities as defined in Article 2(1)(18) of Directive 2014/49/EU. **█**

Financial supervisors shall inform **█ the authorities referred to in the first paragraph where, in the exercise of their supervisory activities, they identify, on AML/CFT grounds, any** of the **█ following situations:**

(a) an increased likelihood, of deposits becoming unavailable;

(b) a risk that a credit or financial institution be deemed to be failing or likely to fail in accordance with Article 32(4) of Directive 2014/59/EU.

Upon request by the authorities referred to in the first paragraph, where there is an increased likelihood of deposits becoming unavailable or a risk that a credit or financial institution be deemed to be failing or likely to fail in accordance with Article 32(4) of Directive 2014/59/EU, financial supervisors shall inform those authorities of any transaction, account or business relationship under management by that credit or financial institution that has been suspended by the FIU pursuant to Article 20.

5. Financial supervisors ■ shall report on a yearly basis to AMLA on their cooperation with other authorities pursuant to this Article *including involvement of FIUs in that cooperation*.

6. By *[2 years after the date of transposition of this Directive]* ■, AMLA shall, in consultation with EBA, issue guidelines on cooperation between financial supervisors and the authorities referred to in paragraphs 2, 3 and 4, including on the level of involvement of FIUs in such cooperation.

Article 49

Cooperation in relation to auditors

1. Member States shall ensure that supervisors in charge of auditors and, where relevant, public authorities overseeing self-regulatory bodies pursuant to Chapter IV of this Directive, their FIU and the public authorities competent for overseeing statutory auditors and audit firms pursuant to Article 32 of Directive 2006/43/EC of the European Parliament and of the Council³⁶ and Article 20 of Regulation (EU) 537/2014 of the European Parliament and of the Council³⁷ cooperate closely with each other within their respective competences and provide each other with information relevant for the performance of their respective tasks.

Confidential information exchanged pursuant to this Article shall be used by the authorities referred to in the first subparagraph solely for the exercise of their functions within the scope of this Directive or the other Union acts referred to in the first subparagraph and in the context of administrative or judicial proceedings specifically related to the exercise of those functions.

2. Member States may prohibit the authorities referred to in paragraph 1 from cooperating when such cooperation, including the exchange of information, would impinge on an ongoing inquiry, *FIU's analysis*, investigation or proceedings in accordance with the criminal or administrative law of the Member State where the authorities are located.

³⁶ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87–107).

³⁷ Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158, 27.5.2014, p. 77).

Article 49a

Cooperation with authorities in charge of implementing targeted financial sanctions

1. Member States shall ensure that supervisors, their FIU and the authorities in charge of implementing targeted financial sanctions cooperate closely with each other within their respective competences and provide each other with information relevant for the performance of their respective tasks.

Confidential information exchanged pursuant to this Article shall be used by the authorities referred to in the first subparagraph solely for the exercise of their functions within the scope of this Directive or other Union acts and in the context of administrative or judicial proceedings specifically related to the exercise of those functions.

2. Member States may prohibit the authorities referred to in paragraph 1 from cooperating when such cooperation, including the exchange of information, would impinge on an ongoing inquiry, investigation or proceedings in accordance with the criminal or administrative law of the Member State where the authorities are located.

■ Professional secrecy *requirements*

1. Member States shall require that all persons working for or who have worked for *supervisors and the public authorities referred to in Article 38, as well as* ■ auditors or experts acting on behalf of ■ *those supervisors or authorities* be bound by the obligation of professional secrecy.

Without prejudice to cases covered by criminal investigations and prosecutions under Member States and Union law and information provided to the FIU pursuant to ■ *Articles 32 and 32a*, confidential information which the persons referred to in the first subparagraph receive in the course of their duties under this Directive may be disclosed only in summary or aggregate form, in such a way that individual ■ *obliged entities* cannot be identified.

2. Paragraph 1 shall not prevent the exchange of information between:

- (a) ■ supervisors, whether within a Member State or in different Member States, including AMLA when acting in accordance with Article 5(2) of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final] *or public authorities referred to in Article 38*;

(b) ■ *supervisors as well as the public authorities referred to in Article 38* and FIUs;

(ba) supervisors as well as the public authorities referred to in Article 38 and competent authorities referred to in Article 2, point (31)(c) and (d) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final];

(c) financial supervisors and ■ authorities in charge of *supervising* credit and financial institutions in accordance with other legislative acts relating to the supervision of credit and financial institutions, including the ECB acting in accordance with Regulation (EU) 1024/2013, whether within a Member State or in different Member States. ■

■

For the purposes of the first subparagraph, point (c), the exchange of information shall be subject to the professional secrecy requirements provided for in paragraph 1.

3. Any authority *or self-regulatory body* that receives confidential information pursuant to paragraph 2 shall only use this information:

(a) in the discharge of its duties under this Directive or under other legislative acts in the field of AML/CFT, of prudential regulation and supervision of credit and financial institutions, including sanctioning;

(b) in an appeal against a decision of the authority *or self-regulatory body*, including court proceedings;

(c) in court proceedings initiated pursuant to special provisions provided for in Union law adopted in the field of this Directive or in the field of prudential regulation and supervision of credit and financial institutions.

Article 51

Exchange of information among supervisors and with other authorities

1. With the exception of cases covered by Article 51(2) of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* , Member States shall authorise the exchange of information between:

(a) supervisors and the public authorities overseeing self-regulatory bodies pursuant to Chapter IV of this Directive, whether in the same Member State or in different Member States;

(b) supervisors and the authorities responsible by law for the supervision of financial markets in the discharge of their respective supervisory functions;

(c) supervisors in charge of auditors and, where relevant, public authorities overseeing self-regulatory bodies pursuant to Chapter IV of this Directive, and the public authorities competent for overseeing statutory auditors and audit firms pursuant to Article 32 of Directive 2006/43/EC and Article 20 of Regulation (EU) 537/2014, including authorities in different Member States.

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The professional secrecy requirements laid down in Article 50(1) and (3) shall not prevent such exchange of information.

Confidential information exchanged pursuant to this paragraph shall only be used in the discharge of the duties of the authorities concerned, and in the context of administrative or judicial proceedings specifically related to the exercise of those functions. The information received shall in any event be subject to professional secrecy requirements at least equivalent to those referred to in Article 50(1).

2. Member States may authorise the disclosure of certain information to other national authorities responsible by law for the supervision of the financial markets, or with designated responsibilities in the field of combating or investigating money laundering, its predicate offences or terrorist financing. The professional secrecy requirements laid down Article 50(1) and (3) shall not prevent such disclosure.

However, confidential information exchanged pursuant to this paragraph shall only be used for the purpose of performing the legal tasks of the authorities concerned. Persons having access to such information shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 50(1).

3. Member States may authorise the disclosure of certain information relating to the supervision of obliged entities for compliance with the requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* to parliamentary inquiry committees, courts of auditors and other entities in charge of enquiries in their Member State, under the following conditions:

- (a) the entities have a precise mandate under national law to investigate or scrutinise the actions of supervisors or authorities responsible for laws on such supervision;
- (b) the information is strictly necessary for fulfilling the mandate referred to in point (a);
- (c) the persons with access to the information are subject to professional secrecy requirements under national law at least equivalent to those referred to in paragraph 1;
- (d) where the information originates in another Member State, it shall not be disclosed without the express consent of the supervisor which disclosed it and solely for the purposes for which that supervisor gave its consent.

Member States may also authorise the disclosure of information pursuant to the first subparagraph to temporary committees of inquiry set up by the European Parliament in accordance with Article 226 of the Treaty on the Functioning of the European Union and Article 2 of Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission³⁸, where that disclosure is necessary for the performance of the activities of those committees.

Section 3

Guidelines on cooperation

Article 52

AML/CFT cooperation guidelines

By *[2 years after the date of transposition of this Directive]* **■**, AMLA shall, in cooperation with the ECB, the European Supervisory Authorities, Europol, Eurojust, and the European Public Prosecutor's Office, issue guidelines on:

- (a) the cooperation between competent authorities under Section 1 of this Chapter, as well as with the authorities referred to under Section 2 of this Chapter and the authorities in charge of the registers referred to in Section 1 of Chapter II of this Directive, to prevent money laundering and terrorist financing;

■

³⁸ *Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission of 19 April 1995 on the detailed provisions governing the exercise of the European Parliament's right of inquiry (OJ L 113, 19.5.1995, p. 1).*

(b) the procedures to be used by authorities competent for the supervision or oversight of obliged entities under other Union acts to take into account money laundering and terrorist financing concerns in the performance of their duties under their respective Union acts.

CHAPTER VI
DATA PROTECTION

Article 53

Processing of certain categories of personal data

1. To the extent that it is strictly necessary for the purposes of this Directive, competent authorities 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 appropriate safeguards for the rights and freedoms of the data subject, *in addition to* the following safeguards:

(a) processing of such data shall be performed only on a case-by-case basis by the staff of each competent authority that have been specifically designated and authorised to perform those tasks;

(b) staff of the competent authorities shall maintain high professional standards of confidentiality and data protection, they shall be of high integrity and are appropriately skilled, *including in relation to the ethical handling of big data sets*;

(c) technical and organisational measures shall be in place to ensure the security of the data to high technological standards.

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2. The safeguards referred to in paragraph 1 shall also apply to the processing for the purposes of this Directive of special categories of data referred to in Article 10(1) of Regulation (EU) 2018/1725 and personal data relating to criminal convictions and offences referred to in Article 11 of that regulation by Union institutions, agencies or bodies.

CHAPTER VII
FINAL PROVISIONS

Article 53a

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 Article 10 shall be conferred on the Commission for an indeterminate period of time from [date of entry into force of this Directive].*
- 3. The power to adopt delegated acts referred to in Article 10 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 Article 12 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 54

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) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 55

Transitional management of FIU.net

At the latest by **[3 years after the date of entry into force of this Directive]** , the Commission shall transfer to AMLA the management of FIU.net.

Until such transfer is completed, the Commission shall lend the necessary assistance for the operation of FIU.net and the exchange of information between FIUs within the Union. To this end, the Commission shall regularly convene meetings of the EU FIU's Platform composed of representatives from Member States' FIUs in order to oversee the functioning of FIU.net.

Article 55a

Amendments to Directive (EU) 2015/849

In Article 31, paragraph (4) is replaced by the following:

'4. Member States shall ensure that the information on the beneficial ownership of a trust or a similar legal arrangement is accessible in all cases to:

(a) competent authorities and FIUs, without any restriction;

(b) obliged entities, within the framework of customer due diligence in accordance with Chapter II;

(c) any natural or legal person that can demonstrate a legitimate interest to access beneficial ownership information.'

Article 56

Review

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

Article 56a

Amendment to Directive (EU) No 2019/1937

In Point 2 of Part II of the Annex to Directive (EU) No 2019/1937, the following point is added:

‘(iii) Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]’

█

Article 57

Repeal

Directive (EU) 2015/849 is repealed with effect from *[date of transposition]* .

References to the repealed Directive shall be construed as references to this Directive and to Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation]* in accordance with the correlation table set out in the Annex.

Article 58

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with *Articles 11 to 13 and 55a of this Directive by [please insert date – 2 years after the date of entry into force]. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the remaining Articles of this Directive by [please insert date - 3 years after the date of entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.*

By way of derogation from the first subparagraph, Member States shall adopt and publish, by [please insert date – 2 years after the date of entry into force], the laws regulations and administrative provisions necessary to comply with Article 12a(6) of this Directive. They shall forthwith communicate to the Commission the text of those provisions. They shall apply those provisions from [28 months after the date of entry into force].

Member States shall set up the single access point referred to in Article 16 by [2 years after the date of transposition of this Directive].

The Commission shall ensure the interconnection of registers referred to in Article 14 in cooperation with the Member States by [2 years after the date of transposition of this Directive].

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 59

Entry into force

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

Article 60

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

Annex

Correlation table

Directive (EU) 2015/849	This Directive	Regulation (EU) XXXX/XX [please insert reference to proposal for anti- money laundering 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)		Articles 23(4) and 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)		Article 29(3)

Article 19		Article 30
Article 20		Article 32
Article 20a		Article 33
Article 21		Article 34
Article 22		Article 35
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)
Article 29	-	-
Article 30(1)		Article 45(1) and (3) and Article 49
Article 30(2)		Article 45(4)
Article 30(3)	Article 10(1)	
Article 30(4)	Article 10(5)	
Article 30(5)	Article 11 and Article 12(1)	
Article 30(5)a	Article 12(2)	
Article 30(6)	Article 11(1), (2) and (3)	

Article 30(7)	Article 45(2)	
Article 30(8)		Article 18(4)
Article 30(9)	Article 13	
Article 30(10)		
Article 31(1)		Articles 43(1) and 46(1) and Article 49
Article 31(2)		Article 46(2)
Article 31(3)		Article 46(3)
Article 31(3a)	Article 10(1)	Article 48
Article 31(4)	Article 11 and Article 12(1)	
Article 31(4a)	Article 12(2)	
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)	
Article 31(10)		Article 43(2)
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)	
Article 32(4)	Articles 18(1) and 19(1)	
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	
Article 33(1)		Article 50(1)
Article 33(2)		Article 50(6)
Article 34(1)		Article 51(1)
Article 34(2)		Article 51(2)
Article 34(3)	-	-
Article 35		Article 52
Article 36	Article 32	

Article 37		Article 53
Article 38	Article 43(3)	Article 11(3)
Article 39		Article 54
Article 40		Article 56
Article 41		Article 55
Article 42		Article 57
Article 43	-	-
Article 44(1)	Article 9(1)	
Article 44(2)		
Article 44(3)	Article 9(3)	
Article 44(4)	Article 9(6)	
Article 45(1)		Article 13(1)
Article 45(2)	-	-
Article 45(3)		Article 14(1)
Article 45(4)	Article 35	
Article 45(5)		Article 14(2)
Article 45(6)		Article 14(3)
Article 45(7)		Article 14(4)
Article 45(8)		Article 13(2)
Article 45(9)	Article 5(1)	

Article 45(10)	Article 5(2)	
Article 45(11)	Article 5(3)	
Article 46(1)		Article 10
Article 46(2)	-	-
Article 46(3)	Article 21	
Article 46(4)		Article 9
Article 47(1)	Article 4	
Article 47(2)	Article 6(1)	
Article 47(3)	Article 6(2)	
Article 48(1)	Article 29(1)	
Article 48(1a)	Article 29(5) and Article 46	
Article 48(2)	Article 29(2) and (5)	
Article 48(3)	Article 29(6)	
Article 48(4)	Articles 33 and 34	
Article 48(5)	Articles 33(4) and 34(2)	
Article 48(6)	Article 31(1)	
Article 48(7)	Article 31(2)	
Article 48(8)	Article 31(5)	
Article 48(9)	Article 29(3)	

Article 48(10)	Article 31(4)	
Article 49	Article 45(1)	
Article 50	Article 47	
Article 50a	Article 45(3)	
Article 51	-	-
Article 52	Article 22	
Article 53	Article 24	
Article 54	Article 26	
Article 55	Article 27	
Article 56	Article 23(2) and (3)	
Article 57	Article 28	
Article 57a(1)	Article 50(1)	
	Article 50(2)	
Article 57a(3)	Article 50(3)	
Article 57a(4)	Articles 33(1) and 34(1) and (3)	
Article 57a(5)	Article 37	
Article 57b	Article 51	
Article 58(1)	Article 39(1)	
Article 58(2)	Article 39(2)	
Article 58(3)	Article 39(3)	

Article 58(4)	-	-
Article 58(5)	Article 39(4)	
Article 59(1)	Article 40(1)	
Article 59(2)	Articles 40(2) and 41(1)	
Article 59(3)	Article 40(3)	
Article 59(4)	Article 40(4)	
Article 60(1)	Article 42(1)	
Article 60(2)	Article 42(2)	
Article 60(3)	Article 42(3)	
Article 60(4)	Article 39(5)	
Article 60(5)	Article 42(4)	
Article 60(6)	Article 42(5)	
Article 61	Article 43	
Article 62(1)	Article 44(1)	
Article 62(2)	Article 6(6)	
Article 62(3)	Article 44(2)	
Article 63	-	-
Article 64		Article 60
Article 64a	Article 54	Article 61
Article 65	-	-

Article 66	-	-
Article 67	-	-
Article 68	-	-
Article 69	-	-
Annex I		Annex I
Annex II		Annex II
Annex III		Annex III
Annex IV	-	-

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