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From:	General Secretariat of the Council
To:	Financial Services Attachés Working Party on Financial Services and the Banking Union (AML)
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Approach to freedom of establishment and freedom to provide services in the AML/CFT framework

During discussions on the future Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) framework, it has emerged that Member States have different understanding of which activities amount to freedom of establishment and which activities fall under the freedom to provide services, and what rules apply respectively. The solutions proposed to address the different situations by the co-legislators also differ. This paper summarises the approach taken by the Court in distinguishing between these two internal market freedoms. It then presents the approach followed in the AML/CFT framework so far, and proposes a possible way forward to support technical discussions.

Distinguishing the two freedoms

The EU Court of Justice has dealt in many instances with cases raising issues regarding the delimitation of internal market freedoms, including the distinction between the freedom of establishment and the freedom to provide services. The judgement of 30 November 1995 in case C-55/94 *Gebhard* is seminal in this field. In paragraphs 25 to 27, the judgement summarises the main distinction between the two freedoms.

The **freedom of establishment** encompasses the participation, on a stable and continuous basis, by an economic operator in the economic life of a Member State other than their State of origin. In contrast, the **freedom to provide services** supposes that the activity is carried out in another Member State on a temporary basis. The temporary nature of the activities has to be determined in light, not only of the duration of the provision of the service, but also of its regularity, periodicity or continuity.

Importantly, the judgement clarifies that whether operators have a presence in the host Member State is not sufficient to determine whether they operate under one or the other freedom, as the providers of services within the meaning of Article 56 TFEU may equip themselves with some form of infrastructure in the host Member State, in so far as such infrastructure is necessary for the purposes of performing the services in question (§27).

This does not mean that the element of the operator's presence in the host Member State is irrelevant. Indeed, in its judgement of 12 September 2006 in case C-196/04 *Cadbury Schweppes*, the Court clarified that "*the concept of establishment within the meaning of the Treaty provisions on freedom of establishment involves the actual pursuit of an economic activity through a fixed establishment in that State for an indefinite period (see Case C-221/89* Factortame and Others *[1991] ECR I-3905, paragraph 20, and Case C-246/89* Commission v United Kingdom *[1991] ECR I-4585, paragraph 21). Consequently, it presupposes actual establishment of the company concerned in the host Member State and the pursuit of genuine economic activity there*." In case C-171/02 *Commission v Portugal*, the Court clarified that *"the fact that an economic operator established in one Member State provides services in another Member State over an extended period is not in itself sufficient for that operator to be regarded as established in the latter Member State*" (§ 27).

In other words, for an operator to exercise the freedom of establishment, operators must among other things have a fixed establishment in the host Member State and the activities exercised through such a fixed establishment must be of a stable and continuous nature. Where these conditions are not met, operators would rely on the freedom to provide services. This is consistent with the subordinate nature of the freedom to provide services, which applies only if the freedom of establishment does not apply (see e.g. case C-384/08 *Attanasio Group*, § 39 or case C-539/11 *Ottica New Line di Accardi Vincenzo*, § 16 as well as § 21 of the Advocate General's opinion in *Gebhard*).

The considerations above have been confirmed by the Court in case C-502/20 *TP v Institut des Experts en Automobiles*. There, the Court recalled that the concept of 'establishment' within the meaning of the Treaty involves the actual pursuit of an economic activity through a fixed establishment in the host Member State for an indefinite period and thus presupposes actual establishment of the company concerned in that Member State and the pursuit of genuine economic activity there (§ 32 and case law cited). In contrast, the freedom to provide services presupposes that the activity is pursued in the host Member State on a temporary basis (§ 34 and case law cited) and that this does not preclude that the operators equip themselves with some form of infrastructure in the host Member State (§ 36 and case law cited). This judgement confirms the case-by-case nature of the assessment required to determine whether operations are carried out under the freedom of establishment or under the freedom to provide services. In particular, the Court noted that the Treaty does not allow determining, in an abstract manner, the duration or frequency beyond which the supply of a service in another Member State can no longer be regarded as falling under the freedom to provide services (§ 35 and case law cited). This underscores that even the elements of duration and frequency cannot be decided upon without looking at the specificities of the case (see to this end § 40).

Nature of the establishment

The Court also dealt with the question of whether a specific form of establishment would be needed for operators to enjoy the freedom of establishment and concluded in the negative. Of relevance is its judgement of 1 October 2015 in case C-230/14 *Weltimmo*, where the Court held that "*the presence of only one representative can, in some circumstances, suffice to constitute a stable arrangement if that representative acts with a sufficient degree of stability through the presence of the necessary equipment for provision of the specific services concerned in the Member State in question*" (§ 30).

While this case deals with the protection of personal data and therefore led the Court to pay particular attention to the objective of the EU rules in question in order to conclude on a very broad reading of the term "establishment", the opinion of the Advocate General notes on this point that the very broad concept of establishment in that Directive accords with the interpretation of the term in the case-law of the Court relating to other areas of EU law (§ 28-29) and that "it is in any event significant that EU law, in a number of spheres, emphasises a definition of the concept of establishment based on the effective exercise of economic activities and a certain degree of stability" (§ 31). Indeed, the Court judgement in joined cases C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07 had already built on *Gebhard* and on case C-205/84 *Commission v Germany* to reaffirm the broad meaning to be attributed to the concept of establishment, and that for a permanent presence to qualify as establishment, it does not need to take the form of a branch or agency (§ 59).

The Advocate General goes on to note that an assessment of whether an operator is established in the host Member State also needs to look at the specifics of the economic activity pursued, especially for undertakings which operate exclusively via the internet,

whose business model – the Advocate General notes – diminishes the importance of the concept of fixed establishment and also has a bearing on the extent of the human and material resources (§ 34). These considerations were taken up by the Court in its judgement (see § 30 quoted above) and point to the need to assess whether activities are carried out through establishments or under the freedom to provide services on a case-by-case basis.

Restrictions to internal market freedoms

It seems useful to also clarify what approach the Court has taken to situations where Member States have imposed specific conditions for the performance of certain economic activities in their territory without any presence/infrastructure. This discussion arose amongst others in relation to gambling (and particularly online gambling), which is an area that has given rise to extensive case law of the Court of Justice.

There are peculiarities to the gambling sector which set it apart from other economic sector and the Court has taken into account in its case law relating to this sector, notably the existence of a certain number of reasons of overriding general interest, such as the objectives of consumer protection and the prevention of both fraud and incitement to squander on gaming, as well as the general need to preserve public order, as well as moral, religious or cultural factors, as well as the morally and financially harmful consequences for the individual and for society associated with betting and gaming (see C-338/04, *Placanica and Others*, § 46-47). In addition, the Court accepted that in the absence of harmonisation at EU level of such a sector, and in light of the specific and increased risks of crime associated with gambling and with online provision of gambling services, Member States may take restrictive measures (see Case C-42/07 *Santa Casa*, § 69-74).

The Court case law consistently held that national regulation of these activities is a restriction to the freedom to provide services. As such, it must be assessed against the proportionality test to confirm whether Union law precludes such a restriction or not. This means that although the Court accepts that public policy, public security or public health concerns may justify Member State action, national measures restricting such activities need to genuinely aim at reducing these risks (see for example the judgement in case C-338/04, *Placanica and Others*, where the measures taken by the Italian government were considered incompatible with Union law). These measures must be assessed on an individual basis to confirm their proportionality. And indeed, as the Advocate General notes in his opinion in *Santa Casa*, although many Member States have adopted restrictive regulations in this sector, in doing so they have followed different approaches (see § 36-40).

Approach under the current AML/CFT rules

Freedom of establishment

Current AML/CFT rules follow a host-based approach. Subsidiaries and branches of credit and financial institutions are considered obliged entities on their own right, and they are subject to AML/CFT supervision of the Member State where they are established, regardless of whether they belong to a group whose head office is established in another Member State. For other types of establishments, Article 45(2) of Directive 2015/849 (the "AMLD") sets out that Member States must require obliged entities established in their territory that operate establishments in another Member State (the host Member State) to respect the national provisions of the host Member State transposing the AMLD in relation to those establishments. Article 48(4), first subparagraph of the AMLD further mandates supervision of those establishments to the host AML/CFT supervisor, and requires cooperation between home and host supervisors in relation to credit and financial institutions.

For establishments of payment and e-money institutions, Article 45(9) enables supervisors of the host Member State to require a contact point to facilitate their supervision and the request of information and documents from those establishments. The AMLD further allows host supervisors to impose remedial measures for serious breaches in relation to those establishments, provided the measures are of a temporary nature (Article 48(4), third subparagraph).

As regards reporting to Financial Intelligence Units (FIUs), Article 33(2) of the AMLD requires compliance officers to transmit suspicious transaction reports (STRs) (or replies to FIU queries) to the FIU of the Member State in whose territory the obliged entity transmitting the information is established. Article 53(1) of the AMLD requires FIUs to promptly forward reports which concern another Member State to the FIU of that Member State, while Article 53(2) requires FIUs that seek to obtain additional information from an obliged entity established in another Member State to address the request to the FIU of the respective Member State.

Freedom to provide services

The AMLD is silent as regards the rules that apply to entities operating in another Member State under the freedom to provide services. Consequently, activities carried out through presence/infrastructure that does not amount to an establishment in another Member State than the Member State where the obliged entity has its head office (i.e. under the freedom to provide services) are primarily subject to the law of the Member State where the head office of the obliged entity is located. However, in case C-212/11 *Jyske Bank*, the Court clarified that under certain conditions Union law does not preclude legislation of a Member State which requires credit institutions to communicate the information required for the purpose of combating money laundering and terrorist financing directly to the FIU of that Member State where the institutions carry out their activities in that State under the freedom to provide services.

Restrictions to internal market freedoms

The current AML/CFT framework is silent as regards situations where Member States impose restrictions to the provision of services in their territory, such as for example the obtaining of a licence. In the gambling sector, the fact that Member States require online gambling operators to obtain a licence to operate in their territory makes such operators "obliged entities" under the national system of those Member States, regardless of the absence of some form of presence/infrastructure in their territory. Thus, where Member States impose a licensing requirement in the gambling sector, they are responsible for the supervision of the licensed activities, and cannot hold the supervisor of the Member State where the entity is established responsible for supervision of those activities. The same would apply to other sectors where Member States introduce specific licensing requirements for the performance of activities in their territory.

New framework and possible way forward

The package of legislative proposals tabled by the Commission in July 2021 aims to deliver, in line with the expectations of both co-legislators, a harmonised regulatory and institutional AML/CFT framework at Union level. This approach reduces the need for national rules and hence limits gaps in application of AML/CFT measures. At the same time, it requires clearer rules in relation to cooperation between supervisors and FIUs, in line with the conclusions that the Court reached in the *Jyske Bank* case.

Obliged entities application of relevant national measures

Rules applicable to obliged entities under the new framework will be essentially contained in two EU Regulations (the AML Regulation or "AMLR" and the recast of the Transfer of Funds Regulation[1]) and in delegated and implementing acts mandated under these legal instruments. As such, the Commission proposal no longer contains a provision akin to the current Article 45(2)[2], which is rendered obsolete by the introduction of harmonised, Union-level rules.

During discussions following publication of the Commission's proposals, Member States have noted a wish to clarify what rules obliged entities must respect in the limited cases where the Regulation allows Member States to adopt national rules (see for example Article 28(5) of the AMLR on situations of higher risk identified at national level).

To address this request, it is proposed to add the following Article under Chapter I of the AMLR, which should also cover the obligation, currently under draft Article 33(2) AMLD, that obliged entities inform their supervisors of activities they intend to carry out in other Member States under the freedom of establishment or under the freedom to provide services, since this provision is better suited for AMLR. The language of paragraph 1, second subparagraph, is taken from the Council General Approach:

Article 6a

Notification of cross-border operations and application of national law

1. Obliged entities wishing to carry out activities within the territory of another Member State for the first time shall notify their supervisors of the activities which they intend to carry out in that other Member State. That notification shall be submitted as soon as the obliged entity takes steps to carry out those activities, and, in the case of establishments, in any event no later than three months prior to the activities of those establishments being commenced. Obliged entities shall immediately notify their supervisors upon commencement of those activities in that other Member State.

The first subparagraph shall not apply to obliged entities subject to specific notification procedures for the exercise of the freedom of establishment and of the freedom to provide services under other Union acts or to cases where the obliged entity is subject to specific authorisation requirements in order to operate in the territory of that other Member State.

2. Any change to the information communicated under paragraph 1 shall be communicated by the obliged entities to the supervisor of the home Member State at least one month before making the change.

3. Where this Regulation allows Member States to adopt additional rules applicable to obliged entities, obliged entities shall comply with the national rules of the Member State in which they are established.

[1] Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849 (Text with EEA relevance), OJ L 150, 9.6.2023, p. 1–39.

[2] "Member States shall require that obliged entities that operate establishments in another Member State ensure that those establishments respect the national provisions of that other Member State transposing this Directive"

4. Where obliged entities operate establishments in several Member States, they shall ensure that those establishments apply the rules of the Member States where those establishments are located.

5. Where obliged entities referred to in Article 29a(1) of Directive [*please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final*] operate ~~through agents, distributors, or through other types of infrastructure under the freedom to provide services,~~ in other Member States than the one where they are established through agents, distributors, or through other types of infrastructure located in those other Member States under the freedom to provide services, they shall apply the rules of the Member States in which they provide services in relation to those activities, unless Article 29a(2) of that Directive ~~[*please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final*]~~ applies, in which case they shall apply the rules of the Member State where their head office is established.

6. Where obliged entities are required to appoint a central contact point pursuant to Article 31a of Directive [*please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final*], they shall ensure that the central contact point is able to ensure compliance with applicable law on behalf of the obliged entity.

The introduction of this provision also requires moving the definition of 'establishment' from the 6th AMLD to the AMLR. For the sake of clarity, it is also proposed to complement this definition in line with the Court case law:

(~~8~~15a) 'establishment' means **the actual pursuit by an obliged entity of an economic activity covered by Article 3 in a Member State or third country other than the country where its head office is established for an indefinite period and through a stable infrastructure, including:**

(i) a branch ~~**or any other form of establishment of an obliged entity that operates in a Member State or third country other than the country where its head office is established,**~~ or ~~**the**~~ subsidiary ~~**of a parent undertaking established in a country other than the country where that parent undertaking has been established**~~, **and**

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

It is further proposed to add recitals explaining the approach:

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

(18b) Consistent with case law of the Court of Justice, unless specifically set out in sectorial legislation, an establishment does not need to take the form of a subsidiary,

branch or agency, but may consist of an office managed by an obliged entity's own staff or by a person who is independent but authorised to act on a permanent basis for the obliged entity. According to this definition, which requires the actual pursuit of an economic activity at the place of establishment of the provider, a mere letter box does not constitute an establishment. Equally, offices or other infrastructure used for supporting activities, such as mere back-office operations, IT-hubs or data centres operated by obliged entities, do not constitute an establishment. Conversely, activities such as the provision of crypto-asset services through ATMs constitute an establishment having regard to the limited physical equipment needed for operators that mainly service their customers through the internet as is the case for crypto-asset service providers.

Reporting obligations

As mentioned above, the question of whether obliged entities operating under the freedom to provide services could be required to transmit STRs to the 'host' FIU has already been dealt with by the Court, which accepted this limitation to the Treaty freedom having regard to the non-harmonised nature of the AML/CFT framework and certain deficiencies in FIU-to-FIU cooperation at the time of the facts, namely:

- The existence, at that time, of broad exemptions for FIUs to divulge information.
- The absence of any time limit for dissemination by the FIU of the Member State where the obliged entity is established, or of sanctions for unjustified refusal to forward the requested information.
- The difficulties to justify a request for transmission on the part of the 'host' FIU.

Cooperation among EU FIUs has dramatically intensified since, and tools have been put in place to support effective cooperation, thus overcoming the difficulties acknowledged by the Court, which led to the interference with Treaty freedoms to be considered proportionate.

Article 53(1), third subparagraph of the AMLD requires FIUs to promptly forward any STR that concerns another Member State to the FIU of that Member State. Similarly, under Article 53(2), FIUs that seek to obtain information from obliged entities in another Member State are required to transmit the request through the FIU of that Member State, which in turn must request the information from the obliged entity and transmit it promptly to the requesting FIU. Exceptions are only provided for cases where the exchange of information would run contrary to fundamental principles of domestic law, and such instances must be duly justified.

Extensive technical work has been put in place to support the implementation of the above requirements through the development of dedicated functionalities in the FIU.net system (the EU tool for FIU-to-FIU cooperation and information-exchange), namely cross-border dissemination (XBD) and cross-border reporting (XBR). Whereas the XBD functionality concerns all 'domestic' STRs received by the FIU that concern another Member State, the XBR feature applies to those reports filed by entities established in a Member State and that operate under the freedom to provide services in another Member State, which solely concern that other Member State. The XBD and XBR functionalities have been developed and accompanied by guidance to EU FIUs in such a way as to make their dissemination as automatic as possible, including encouragement to obliged entities to file reports in English in the case of XBRs.

All the above elements are preserved under the 6th AMLD and complemented by Implementing Technical Standards and Guidelines to be prepared by AMLA. In addition, Member States are asked to notify to the Commission the exceptional circumstances under

which exchanges of information would be contrary to fundamental principles of national law, which will ensure transparency and contribute to achieving the goal that such a safeguard be not misused to unduly limit the FIUs' analytical work.

Given the above, we do not consider that requiring the obliged entity to report to the 'host' FIU in all cases would satisfy the requirement of proportionality of the interference with Article 56 TFEU. This approach is implied in the Council's General Approach to Article 5 of the 6th AMLD requiring contact points, including for agents/distributors operating under the freedom to provide services, to file reports to the FIU of that Member State. This is even more relevant for new entrants into the market, for whom the costs of setting up infrastructure to interact with more than one FIU would have significant consequences and may risk deterring them from performing their role under the AML/CFT framework fully.

The negotiating position of the European Parliament that all reporting be centralised in a single system (the FIU.net) to be hosted by AMLA does not appear justified or proportionate either:

- First, FIU.net has been designed for FIU-to-FIU cooperation. While the system can sustain expansion to additional FIUs or authorities such as Europol currently and AMLA in the future, its design and architecture would need to be completely overhauled to allow for the connection of tens of thousands obliged entities. Such a change would make the FIU.net unavailable for FIU-to-FIU cooperation over an undetermined period and will most probably have a significant budgetary impact.

- Second, each FIU today has its own reporting system, developed in-house, or uses the GoAML system developed by the UNODC. Those reporting systems are explicitly tailored to the needs of the FIUs and are integrated with their domestic databases and systems. There is no evidence at present that the level of cooperation between FIUs is such as to require the use of a single, alternative reporting system at EU level whose costs (both for AMLA and FIUs and for obliged entities) have yet to be calculated.

Instead, it is proposed to build on the current system, i.e. that reporting be made where the establishment concerned by the suspicion is located, whereas suspicions related to services rendered under the freedom to provide services (whether through a presence/infrastructure or not) should be reported to the home FIU, i.e. the FIU of the Member State where the obliged entity's head office is located. We propose to mandate the Commission to assess the need for a single reporting system at Union level.

We deem it important that the obliged entity's compliance officer remain in charge of submitting reports also where the obliged entity is established in several Member States, and that this role is not automatically transferred to the contact point established pursuant to Article 5 of the 6th AMLD. The analysis function of the obliged entity may be centralised so that establishments may not have the means or knowledge to report to the FIU. In addition, whether to require the establishment of a contact point is the sole discretion of the host supervisor, whereas there needs to be certainty as regards the mechanism for reporting suspicions, including access to secured reporting channels.

To support prompt dissemination of XBRs and reflect the lack of nexus with the sending FIU, it is suggested to modify Articles 26 and 27 of the 6th AMLD.

Article 26

Use by FIUs of information exchanged between them

Information and documents received pursuant to Articles 22 and 24 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 and 24 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. 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.

Finally, it is proposed to add a provision to Article 62 AMLR to mandate an assessment by the Commission of the need to establish a single reporting system at EU level:

Article 62

Review

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

The first report shall include an assessment of the national systems for reporting of suspicions pursuant to Article 50 and obstacles and opportunities to establish a single reporting system at Union level.

Identification of the competent supervisor

During discussions on the Commission proposals, it has become evident that a clarification as regards the scope of entities under supervision of national supervisors would be useful to avoid situations of conflict of supervisory competence or lack of supervision.

In order to provide the necessary legal clarity, the following modifications are proposed to Article 29 of the 6th AMLD to clarify that supervisors are responsible for supervision of any type of establishment in the territory of their Member State, as well as for the supervision of activities carried out through the internet where Member States derogate from the fundamental freedoms of the internal market on grounds of overriding general interest. It is further proposed to carve out from the article situations where AMLA acts as supervisor:

Article 29

Powers and resources of national supervisors

1. **Each** Member State~~s~~ shall ensure that all obliged entities **established in its territory, and except for the circumstances covered in Article 29a,** are subject to adequate 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]**, ~~and~~** 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** [and with the requirement to implement targeted financial sanctions].

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*].

It is suggested to introduce a recital to explain the situation of Member States supervising services provided remotely in their territory, which recalls that this is a restriction to the

freedom to provide services and that any such restriction should be limited to what is strictly necessary to attain the objective of general interest:

(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 prejudge the conclusions that the Court of Justice may draw on the compatibility of national measures with Union law.

In addition, in keeping with the host-country approach of AML/CFT rules, it is proposed to introduce a clarification that supervisors are also responsible to supervise the activities of certain obliged entities (i.e. e-money issuers, payment institutions and crypto-asset service providers) established in another Member State that operate under the freedom to provide services in their Member State, provided that they have a presence/infrastructure in their territory. It is proposed to clarify that this also apply when these services are provided under the CRD passport.

The proposal does not extend to other types of obliged entities, particularly in the non-financial sector, as these activities are primarily provided on a national basis or without presence/infrastructure in other Member States, and their inclusion would therefore be unjustified. To keep this approach proportionate and avoid an excessive burden on obliged entities, where the presence/infrastructure of the obliged entity is negligible and the supervisor concludes it is unjustified for it to supervise those entities, the supervisor of the Member State where the obliged entity has its head office will be responsible for their supervision.

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/EC[3];

[3] **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).**

(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.

1a. Member States shall ensure that supervisors inform AMLA by [*6 months after the date of transposition of this Directive*] of the types of infrastructure under their supervision pursuant to paragraph 1. Member States shall also ensure that supervisors update that information as soon as new types of infrastructure are supervised.

AMLA shall maintain a list of the types of infrastructures notified pursuant to the first subparagraph, and shall make it available to financial supervisors.

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 second subparagraph, 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*].**

It is also proposed to move Article 5 on contact points to this chapter, as it essentially deals with a mechanism to facilitate supervision, as a new article 31a, and to make a few changes to it to clarify the scope since Member States had found the terminology contained in the initial Commission proposal unclear, although in substance the principle is unaltered, with the possibility for Member States to request the appointment of contact points where the presence/infrastructure in their territory is of relevance, irrespective of which Treaty freedom the obliged entity relies upon for its activities in the host Member State. For avoidance of confusion, it is also proposed to remove the term "entity operating on a cross-border basis" (see below).

Article ~~5~~31a

Contact points

1. **For the purposes of Article 29(1) and of Article 29a(1),** Member States may require electronic money issuers **~~as defined in Article 2(3) of Directive 2009/110/EC~~**[44], payment service providers **~~as defined in Article 4(11) of Directive (EU) 2015/2366~~** 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 ~~through agents located in the host Member State and operating under either the right of establishment or the freedom to provide services, and whose head office is situated in another Member State~~**, to appoint a central contact point in their territory. That central contact point shall ensure, on behalf of the **obliged** entity **~~operating on a cross-border basis~~**, compliance with AML/CFT rules and shall facilitate supervision by supervisors, including by providing supervisors with documents and information on request.

CLARIFY ROLE OF CONTACT POINT – AMLR **Where obliged entities are required to appoint a central contact point pursuant to Article 31a of Directive [*please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final*], they shall ensure that the central contact point is able to ensure compliance with applicable law on behalf of the obliged entity.**

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].

The changes made to the text make the definition of 'entity operating on a cross-border basis' confusing, as it relies on the concept of establishment, whereas the scope of supervision and of the contact point article is broader. This definition is used only in three articles, namely the article on definition, the article on contact points (already modified) and the article on supervisory colleges. We propose to amend as follows the article on colleges to keep it limited to situations of higher materiality, i.e. where the obliged entity operates establishments in other countries than the home Member State.

At the same time, it is proposed to allow supervisors of the Member States where the obliged entity operates under the freedom to provide services to be invited to join the college, and to make sure that the college deals with weaknesses not only at the level of establishments (which are in other Member States than that of the head office), but also at the level of the obliged entity's head office:

Article 36

AML/CFT supervisory colleges

Commented [redacted]: These changes have been taken up in the redrafting of the article on colleges, alongside the comment regarding the need to distinguish in paragraph 2 between the situations of FPS with host supervision and FPS without

1. Member States shall ensure that dedicated AML/CFT supervisory colleges are established in any of the following situations:

(a) where a credit or financial institution 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.

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*].

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

(a) all credit and financial institutions ~~**operating on a cross-border basis**~~ 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** ~~**jurisdictions**~~;

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

2a. Where credit and 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.

3. Members 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. Such colleges may be used for exchanging information, providing mutual assistance or coordinating the supervisory approach to the 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 with national rules adopted by the Member States for the implementation of those regulations** that are detected **at the level of the financial institution or** across the establishments set up by the institution in the jurisdiction of a supervisor participating in the college.

As regards the article on definitions, we propose to delete the definition of 'entity operating on a cross-border basis', and to adjust the definitions of 'host Member State' and AML/CFT supervisory colleges to reflect the changes proposed in this paper.

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;

(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, 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 ~~has~~** a subsidiary or a branch**,** or **where the entity operates under the freedom to provide services through an infrastructure ~~provides services~~**;

(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 Council[42] and the competent authorities as defined in Article 2(1), point (g), of Regulation (EU) 2018/1672 of the European Parliament and of the Council[43];

(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** ~~**operating on a cross-border basis**~~;

~~**(7) 'entity operating on a cross-border basis' means an obliged entity having at least one establishment in another Member State or in a third country;**~~

Finally, it is necessary to lay down a provision determining what type of measures supervisors of the Member State where the obliged entity operates establishments or exercises activities under the freedom to provide services can take, bearing in mind that the obliged entity is subject to supervision in the home Member State (i.e. the country where its registered office or head office is situated). Since establishments such as subsidiaries, branches and insurance and credit intermediaries are obliged entities in their own right, they should be excluded from such provision as they should be supervised in all instances by the supervisor of the country where they are located, and that supervisor should have full supervisory powers over them. To address the need to clarify supervisory measures towards establishments and certain activities carried out under the freedom to provide services, we propose to remove paragraph 4, second subparagraph from the draft Article 33 of the Directive, and to make it a self-standing provision, with changes to reflect the scope of supervisory powers proposed in this paper. It is proposed to include this new article under section 4 of the supervision chapter, as it deals with supervisory sanctions and measures, as a new Article 39a:

Article 39a

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

1. In the case~~s covered by Article 5~~ **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**~~**compliance failures**~~**, 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~~irregularities~~ 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~~failings~~ 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~~failings that require immediate remedies~~**. Those measures shall be temporary and be terminated when the **breaches~~failings~~** 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~~failings~~ 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~~s 5 and 10~~ 30b of Regulation [*please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final*]. AMLA shall provide its ~~advice~~ opinion on the matter of disagreement within one month.

In order to reflect the clarifications regarding supervisory competence and powers, it is proposed to slightly revise recital 64 as follows:

(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 ~~serious~~ **breaches~~infringements~~** 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~~of those types of infrastructure~~.** 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 ~~group~~ AML/CFT policies and procedures**, and to allow the supervisor of the home Member State to take measures to address any breach identified~~shortcoming~~. However, where ~~In order to remove~~** serious**, repeated or systematic breaches~~infringements~~** 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~~failings~~, where appropriate, with the assistance of, or in cooperation with, the supervisor of the home Member State.

Supervisory cooperation

During discussions with the Member States, it became clear that there is a wish to strengthen the provisions relating to supervisory cooperation. We would therefore propose to split the provisions of the draft Article 33 of the Directive by only keeping general principles of cooperation under Article 33, and to provide for rules pertaining to the different cases separately to improve legal clarity.

Article 33

General principles regarding supervisory cooperation ~~***Supervision of obliged entities operating under the freedom of establishment and freedom to provide services***~~

~~**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**.

Then, a new Article 33a could cover the duty of the home supervisor to inform the host of any type of activity that the obliged entity intends to carry out in the territory of the host Member State (currently included under draft Article 33(2) and (3)). The link to Article 6a(1) AMLR ensure that both activities under the freedom of establishment and under the freedom to provide services are notified, except when such notification already takes place under prudential rules. We accept to take over the amended timeline for submission of information to the host supervisor proposed in the Council General Approach as it is consistent with timelines included in other Union acts (e.g. Solvency II), but given the importance of host supervision under AML/CFT rules, we propose to add “as soon as possible”.

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.

Then, the draft Article 33(4) of the Directive aimed to provide a framework for cooperation between supervisors in relation to obliged entities operating across border, where the operations did not amount to a group. The current draft has been considered both unclear and insufficient as it only laid down a general principle of cooperation, which may not be commensurate to the integrated supervisory system that the reform aims to deliver. It is therefore proposed to introduce, after the article on group supervision, a new Article 34a to clarify the scope of cooperation in relation to entities operating across borders. Paragraph 1 aims to tackle situations where there is a home and host supervisor, each of which has supervisory responsibilities towards the obliged entities, its establishments or types of infrastructure. Paragraph 2 aims to deal with situations where supervision is only carried out by the home supervisor, either because the host has decided to renege its supervision (as allowed under Article 29a(2), or because there is no infrastructure in that Member State (and no authorisation is required to operate there). Under both instances, it is proposed to enable as close cooperation as possible and the possibility to refer matters of disagreement to AMLA.

Article 34a

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). ~~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*].~~

Commented [redacted]: Following TM, we looked again at this and it is indeed not needed.

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~~other parts of the group~~, and pecuniary~~supervisory~~ 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 ~~presence or~~ infrastructure in other Member States is entrusted to the supervisors of the home Member State pursuant to Article~~s 29(1) and~~ 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 ~~legal~~ applicable requirements, including those in place in the host Member State. Where serious, repeated or systematic breaches ~~compliance deficiencies~~ are identified, the supervisors of the home Member State shall promptly inform the supervisors of the host Member State of those breaches ~~deficiencies~~ and of any ~~supervisory~~ 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 ~~legal~~ 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 ~~supervisory~~ sanctions or administrative measures to be imposed on the entity ~~or group~~ to remedy breaches identified~~compliance failures~~.

AMLA may act in accordance with the powers conferred on it under Article~~s 5 and 10~~ 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.

Finally, minor modifications are proposed to Article 34 of the 6th AMLD to ensure effective cooperation in the context of group supervision and full alignment with FATF standards, as well as consistency with AMLR where decisions on subsidiaries outside the EU are to be taken by the ultimate parent undertaking. In addition, it is proposed to apply group-like requirements for supervisory cooperation when obliged entities that provide services remotely are supervised also in the Member State where they have no establishment following the application of restrictions to the freedom to provide services in that Member State to pursue an objective of general interest. In this case, each supervisor has full supervisory powers over certain activities of the obliged entity (or all activities for the supervisor of the Member State where the entity's head office is established) and full sanctioning powers, so that the highest level of supervisory cooperation should be implemented.

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 **~~and procedures~~** referred to in **Chapter II, Section 2 ~~Article 13~~** 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 ~~its~~** 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 [and with the requirement to implement targeted financial sanctions]**.

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) ~~**internal controls,**~~ policies**,** ~~**and**~~ 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 ~~**and sanctions**~~ **that** ~~**taken by**~~ 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**;**

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

AMLA may act in accordance with the powers conferred on it under Article**~~s 5 and 10~~ 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 other than credit or financial institutions**;**

(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.

Member States shall also ensure that in cases where obliged entities other than credit and financial institutions are part of structures which share common ownership, management or compliance control, including networks or partnerships, cooperation and exchange of information between supervisors is facilitated.

Selected entities for AMLA direct supervision

The procedure for the selection of entities directly supervised by AMLA has been the subject of discussions during the political trilogue of 19 July. As a follow-up to that meeting, redrafting of Articles 12 and 13 of the Regulation establishing AMLA is under consideration. The redrafting – which will be submitted separately – will reflect discussions and address the issue of

(i) cross-border groups;
(ii) entities with establishments in Member States other than the one where their head office is situated, and
(iii) entities operating under the freedom to provide services without infrastructure in other Member States than that where they are established.