



Council of the European Union
General Secretariat

Brussels, 08 November 2023

Interinstitutional files:
2021/0240 (COD)

WK 14559/2023 INIT

LIMITE

REDACTED DOCUMENT
ACCESSIBLE TO THE PUBLIC (26.08.2025). ONLY
MARGINAL PERSONAL DATA HAVE BEEN
REDACTED.

EF
ECOFIN
DROIPEN
ENFOPOL
CT
FISC
COTER
CODEC

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From: General Secretariat of the Council
To: Financial Services Attachés
Working Party on Financial Services and the Banking Union (AML)

Subject: AML working party 13.11.23
AMLA. Commission services non-paper on Article 30c

WK 14559/2023 INIT

LIMITE

EN



Article 30c - "Breach of Union Law" + recital

Recital

EP mandate : nothing

COM proposal : **(line 39d)**:

(29d) With the objective to safeguard an effective functioning of the AML/CFT supervisory system in the financial sector, the Authority should also be able to investigate possible breaches or incorrect application of Union law by individual financial supervisors in case of systematic failure of supervision affecting multiple obliged entities. The Authority should be able to investigate potential breaches on its own initiative, where it becomes aware of them in the process of carrying out its tasks pursuant to this Regulation, such as the results of the assessments of the state of supervisory convergence. The investigation should be conducted where other means available to the Authority to ensure consistent and high quality supervision across the Union, such as the request to act in exceptional circumstances, would not prove effective. As a result of an investigation, the Authority should be able to issue a Recommendation setting out specific actions that would allow the financial supervisor to return to compliance. Only in cases where the Recommendation is not complied with, should the Commission be able to address a formal opinion to the financial supervisor concerned, without prejudice to its powers to launch an infringement procedure.

Article 30c

	EP Mandate	COM Proposal
393ae	<u>Article 30c</u> <u>Breach of Union law</u>	<u>Article 30c</u> <u>Action in case of systematic failures of supervision</u>
	Article 30c(1)	

393af	<p><u>1. Where a supervisory authority has not applied measures laid down in Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final] or the provisions of national law transposing that Directive, or has applied measures in a way that appears to be a breach of Union law, in particular by failing to ensure that an entity under its supervision satisfies the requirements laid down in Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], the Authority shall act in accordance with the powers set out in paragraphs 2, 3, 4, 6 and 7 of this Article.</u></p>	<p><u>1. Where a financial supervisor supervisory authority has not applied measures laid down in Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final] or the provisions of national law transposing that Directive, or has applied measures in a way that appears to be a breach of Union law, in particular by failing to ensure that an entity under its supervision satisfies the requirements laid down in Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] leading to systematic failures in its supervision which affect multiple obliged entities and undermine the effectiveness of the AML/CFT supervisory system, the Authority shall act in accordance with the powers set out in paragraphs 2, 3, 4, 6 and 7 of this Article.</u></p>
	Article 30c(2), first subparagraph	
393ag	<p><u>2. Upon the request of one or more supervisory authorities, or the European Parliament, the Council, the Commission, or on its own initiative, including where based on well-substantiated information from natural or legal persons, and after having informed the supervisory authority concerned, the Authority shall outline how it intends to proceed with the case and, where appropriate, investigate the alleged breach or non-application of Union law.</u></p>	<p><u>2. The Authority may initiate an investigation of a potential breach of Union law referred to in paragraph 1 on its own initiative where it has an indication of such a breach derived from well-substantiated information collected by the Authority when carrying out its tasks pursuant to this Regulation.</u> <u>The Authority may also investigate an alleged breach or non-application of Union law upon a well-substantiated request of one or more financial supervisors supervisory authorities, or the European Parliament, the Council, or the Commission, or on its own initiative, including where based on well-substantiated information from natural or legal persons.</u> <u>Where an investigation has been requested, the Authority shall duly inform the requestor on how it intends to proceed with the case and whether an investigation into an alleged breach is warranted. Prior to deciding to investigate a potential breach of Union law, the Authority shall inform the financial supervisor concerned.</u></p>

Commented [REDACTED] : COMMENT TO CO-LEGISLATORS: we assume that this provision was meant to apply only in fin sector, as there is a dedicated BUL procedure (with appropriate adaptations) in non-fin sector
So here we should only refer to fin supervisors

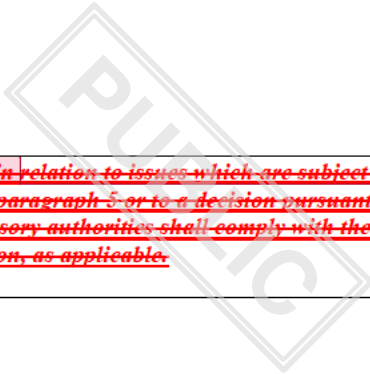
	Article 30c(2), second subparagraph	
393ah	<u>The supervisory authority shall, without delay, provide the Authority with all information which the Authority considers necessary for its investigation including with regard to how the acts referred to in paragraph 1 are applied in accordance with Union law.</u>	<u>3. The financial supervisor supervisory authority shall, without delay, provide the Authority with all information which the Authority considers necessary for its investigation, including with regard to how the acts referred to in paragraph 1 are applied in accordance with Union law.</u>
	Article 30c(2), third subparagraph	
393ai	<u>Whenever requesting information from the supervisory authority has proven, or is deemed to be, insufficient to obtain the information that is deemed necessary for the purposes of investigating an alleged breach or non-application of Union law, the Authority may, after having informed the supervisory authority, address a duly justified and reasoned request for information directly to other supervisory authorities. The addressees of such a request shall, without undue delay, provide the Authority with clear, accurate and complete information.</u>	<u>Where deemed appropriate and necessary, the Authority may also, after having informed the financial supervisor concerned supervisory authority, provide an opportunity to all other financial supervisors to transmit information to it that they deem relevant or address a duly justified and reasoned request for information to any other financial supervisor directly, to other supervisory authorities. The addressees of such a request shall, without undue delay, provide the Authority with clear, accurate and complete information.</u>
	Article 30c(3), first subparagraph	
393aj	<u>3. The Authority may, no later than six months from the date of initiating its investigation, address a recommendation to the supervisory authority subject to investigation setting out the action necessary to comply with Union law.</u>	<u>4. The Authority may, no later than six months from the date of initiating its investigation, address a recommendation to the financial supervisor supervisory authority subject to investigation, setting out the action necessary to comply with Union law.</u>
	Article 30c(3), second subparagraph	
393ak	<u>Before issuing such a recommendation, the Authority shall engage with the supervisory authority, where it considers such engagement appropriate in order to resolve a breach of Union law, in an attempt to reach agreement on the actions necessary for compliance with Union law.</u>	<u>Before issuing such a recommendation, the Authority shall engage with the financial supervisor supervisory authority, where it considers such engagement appropriate in order to resolve the systematic failures of supervision resulting in the breach of Union law, in an attempt to reach agreement on the actions necessary for compliance with Union law.</u>

	Article 30c(3), third subparagraph	
393al	<u>The supervisory authority shall, within 10 working days of receipt of the recommendation, inform the Authority of the steps it has taken or intends to take to ensure compliance with Union law.</u>	<u>The financial supervisor supervisory authority shall, within 10 working days of receipt of the recommendation, inform the Authority of the steps it has taken or intends to take to ensure compliance with Union law.</u>
	Article 30c(4), first subparagraph	
393am	<u>4. Where the supervisory authority has not complied with Union law within one month of the date of receipt of the Authority's recommendation, the Commission may, after having been informed of that fact by the Authority, or on its own initiative, issue a formal opinion requiring the supervisory authority to take the action necessary to comply with Union law. The Commission's formal opinion shall take into account the Authority's recommendation.</u>	<u>4. Where the financial supervisor supervisory authority has not complied with Union law within one month of the date of receipt of the Authority's recommendation, the Commission may, after having been informed of that fact by the Authority, or on its own initiative, issue a formal opinion requiring the financial supervisor supervisory authority to take the action necessary to comply with Union law. The Commission's formal opinion shall take into account the Authority's recommendation.</u>
	Article 30c(4), second subparagraph	
393an	<u>The Commission shall issue such formal opinion within three months of the date of adoption of the recommendation. The Commission may extend that period by one month.</u>	<u>The Commission shall issue such a formal opinion within three months of the date of adoption of the recommendation. The Commission may extend that period by one month.</u>
	Article 30c(4), third subparagraph	
393ao	<u>The Authority and the supervisory authority shall provide the Commission with all necessary information.</u>	<u>The Authority and the financial supervisor supervisory authority shall provide the Commission with all necessary information.</u>
	Article 30c(5)	
393ap	<u>5. The supervisory authority shall, within 10 working days of receipt of the formal opinion referred to in paragraph 4, inform the Commission and the Authority of the steps it has taken or intends to take to comply with that formal opinion.</u>	<u>5. The financial supervisor supervisory authority shall, within 10 working days of receipt of the formal opinion referred to in paragraph 4, inform the Commission and the Authority of the steps it has taken or intends to take to comply with that formal opinion. When taking action in relation to issues which are subject to a formal opinion, financial supervisor shall comply with the formal opinion.</u>

PUBLIC

	Article 30c(6), first subparagraph	
393aq	<u><i>6. Where a supervisory authority does not comply with the formal opinion within the period specified therein, and where it is necessary to remedy, in a timely manner, such non-compliance in order to attain or restore the integrity, stability and reputation of the financial system, the Authority may adopt an individual decision addressed to a non-selected obliged entity requiring it to take all necessary action to comply with its obligations under Union law. To that effect, the Authority shall apply all relevant Union law, and, where that Union law is composed of Directives, national law to the extent that it transposes those Directives. Where the relevant Union law is composed of Regulations and where those Regulations expressly grant options for Member States, the Authority shall apply also national law to the extent that such options have been exercised.</i></u>	<i>6. Where a supervisory authority does not comply with the formal opinion within the period specified therein, and where it is necessary to remedy, in a timely manner, such non-compliance in order to attain or restore the integrity, stability and reputation of the financial system, the Authority may adopt an individual decision addressed to a non-selected obliged entity requiring it to take all necessary action to comply with its obligations under Union law. To that effect, the Authority shall apply all relevant Union law, and, where that Union law is composed of Directives, national law to the extent that it transposes those Directives. Where the relevant Union law is composed of Regulations and where those Regulations expressly grant options for Member States, the Authority shall apply also national law to the extent that such options have been exercised.</i>
	Article 30c(6), second subparagraph	
393ar	<u><i>The decision of the Authority shall be in conformity with the formal opinion issued by the Commission pursuant to paragraph 4.</i></u>	<i>The decision of the Authority shall be in conformity with the formal opinion issued by the Commission pursuant to paragraph 4.</i>
	Article 30c(7), first subparagraph	
393as	<u><i>7. Decisions adopted in accordance with paragraph 6 shall prevail over any previous decision adopted by the supervisory authority on the same matter.</i></u>	<i>7. Decisions adopted in accordance with paragraph 6 shall prevail over any previous decision adopted by the supervisory authority on the same matter.</i>
	Article 30c(7), second subparagraph	
393at		

Commented [REDACTED]: COMMENT FOR CO-LEGISLATORS: as explained in the TM, since the intention of this article as we understood from the EP is to tackle systematic failures affecting multiple OEs, unlike cases of Art. 30 where AMLA can issue a binding instruction to tell how to act vis-a-vis individual entity, this is not going to be helpful or necessary. If even the COM Rec is not complied with, then we have a good case for an infringement



<p><u><i>When taking action in relation to issues which are subject to a formal opinion pursuant to paragraph 5 or to a decision pursuant to paragraph 6, supervisory authorities shall comply with the formal opinion or the decision, as applicable.</i></u></p>	<p><u><i>When taking action in relation to issues which are subject to a formal opinion pursuant to paragraph 5 or to a decision pursuant to paragraph 6, supervisory authorities shall comply with the formal opinion or the decision, as applicable.</i></u></p>
--	---

Commented [REDACTED] COMMENT TO CO-LEGISLATORS:
this has been integrated in para 5