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WK 14615/2023 INIT

LIMITE

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## **WORKING DOCUMENT**

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From: Commission Services  
To: Financial Services Attachés  
Working Party on Financial Services and the Banking Union (AML)

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Subject: AML working party 13.11.23 AMLA: Commission services non-paper on direct supervision (Art. 12 and 13) – revised drafting for technical level discussion

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## **Direct supervision (Art. 12 and 13) – revised drafting for technical level discussion**

While certain issues in Articles 12 and 13 (e.g. features of the first selection process such as residual risk, 1 entity per MS, etc) remain subject to political agreement, there is a need to revise and streamline the text to be presented at political level. The Council and EP mandates both significantly deviate from COM proposal drafting and there are broad conceptual agreements on the main features of the selection process. Based on those, this paper proposes technical drafting that could be the basis of a potential compromise and discussion of remaining political issues.

Combining certain features of the process that both co-legislators agree on, may require some restructuring or refining of the drafting. For example, that concerns the interaction of EP's proposed flexible cap on entities to be supervised with the 1 entity per MS requirements, and the cut off criteria which should ensure that any fixed or chosen by AMLA number of entities to be supervised is in line with Meroni doctrine.

Similarly, some nearly identical EP and Council amendments are located in different paragraphs of the articles – below is our suggestion on what could be the best overall structure, with appropriate explanations upfront.

### **Comparison of Council and EP approaches and issues with current drafting**

*The below comments are based on our preliminary understanding of the co-legislators' mandates and the purpose of spelling them out is to clarify in the technical meetings what the objectives of both co-legislators are.*

#### *Residual risk application*

- Both co-legislators agree that residual risk should be the basis for selection at least as of the second selection process
- However, the Council drafting may not be sufficiently clear because the normative provision refers to "risk" without qualifying the type, whereas the RTS mandate refers to both inherent and residual risk
- The EP drafting deletes all the references to inherent risk estimation, substituting it with references to residual risk only, which is also problematic – first of all, the benchmarks listed in Art. 12(5) are all *inherent* risk benchmarks, and secondly, in practice in order to arrive at an estimate of residual risk, the methodology has to inevitably provide for estimate of inherent risk first.

#### *Accommodating the selection methodology to all forms of freedom to provide services*

- Both co-legislators agree that entities which operate under the freedom to provide services without physical presence and that do not constitute a group (including CASPs), should be subject to assessment and selection
- For that purpose, the Council drafting which refers to both credit and financial institutions "and groups thereof" is more suitable and should be replicated throughout the text
- However, the Council uses the concept of "active provision of services" and requires AMLA to clarify it, in order to avoid a situation where mere passporting without active business (and consequently absence of risk) would lead to the need for assessment

- The concept of “active provision of services” is problematic as it seems to qualify an internal market freedom beyond Court’s interpretations. Instead, we could simply more explicitly mandate AMLA to define in level 2 where the provision of services triggers assessment

*Different caps on total number of entities and 1 entity per MS*

- In accordance with the Council GA, the cap of 40 entities only applies to the very first selection, see line 253a
- As of the second selection, 1 entity per MS applies and there is no cap in Council GA. The cut-off criterion applies only to the entities in a single MS where there is a need to choose 1 between a few entities with high risk score in the same MS
- The risk with the Council approach is the potential ‘runaway’ number of entities – it could theoretically double from first selection to the second, posing difficulties to hire adequate number of supervisory and other support staff and prepare to a much more extended scope of supervision in a short period of time.

*NB: This would not be the risk under COM proposal because the assessment universe would have been much smaller and could not yield a high number of entities – hence no need for an upfront or any further limit*

- In accordance with EP mandate, there is a cap of 40 entities in the first selection process, but at the same time it is not clear whether 40 should supposedly include all the “additional” entities in individual MSs, and how to make sure that 1 entity per MS is respected.
- As of the second selection there is a “flexible” cap that allows to go to 44, then 48, and so on – up to the total of 60.
- However, the legal text is not yet clear how to actually achieve that 40-44-48-60 and how to make sure that the 1 entity per MS would definitely be safeguarded:
  - o Assume that the second regular selection results in 60 entities and groups with high risk, but in 5 MS there is none that qualifies and hence 1 entity per MS has to apply
  - o AMLA will have to go from a total of 65 to a maximum of 44, but if we apply Council criteria of No of MS of activity + relative transaction ratio, it is likely that one or a few or all of the 5 “additional” entities would be cut out, thus nullifying the purpose of 1 entity per MS
- At the same time, the semi-flexible cap applicable beyond the first selection does mitigate some operational risks of the Council approach where there is no cap at all
- On 1E/MS, EP would like that only high-risk subsidiaries of the group selected in the regular process would qualify as “covering” the MS that has no other selected OEs or groups (which is not clearly mentioned in Council mandate).

*Our understanding of Council and EP imperatives*

- We assume that the co-legislators would like to make sure that at least as of the second selection 1 entity per MS should be ensured, and even if some flexible or hard cap on the No of entities would still apply, it should not affect the “additional” entities picked in MS where there was no qualifying group or entity (at least a subsidiary of a qualifying group with high risk profile)
- Considering that the Council version doesn’t have any cap and the EP’s drafting is leaving some margin of discretion to AMLA within the increase, we assume that both co-legislators would wish AMLA to be able to supervise more entities/groups that 40 if more than 40 classify as high risk.

- The limitation that the EP introduces is linked to potential resource and planning constrains (e.g. hiring staff because the number of high risk groups doubles from one assessment period to another)
- Therefore, some form of flexible cap could be agreeable to both co-legislators, as long as: 1) it is risk-based, 2) does not effect 1 entity per MS principle and 3) does not compromise AMLA's operational capacity and budgetary planning
- At the same time, the discretion of AMLA to pick a limited number of high risk entities among a larger pool is constrained by Meroni doctrine, and therefore the Council introduced cut-off criteria for 40 entities in the first selection.
- Similarly, where in a stable state as of second selection AMLA is given the discretion to pick some more entities out of the pool of those that are high risk in accordance with the methodology, it should also be able to apply some objective criteria to limit the legal risks
- We understand that ensuring prudent budgetary planning and gradual expansion of AMLA's direct supervisory competence is a goal of both co-legislators
- Therefore, the flexible cap/gradual increase of No of directly supervised entities can be beneficial.

#### **Exceptions in the first selection – the need for a transitional provision**

- The discussions of the potential compromise may result in certain one or a few of the following features only applying or not applying in the first selection:
  - o the inherent risk to be applicable in the first selection process,
  - o the 1 entity per MS rule not applicable in the first selection process
  - o [40] entities cap should only apply in the first selection<sup>1</sup>
- Any agreed elements that apply to first selection process only, could for the purposes of clear legal drafting be placed in a transitional arrangement at the end of the Regulation, and Article coming just before the Article on entry into force
- The transitional would enable avoiding the reference to “first selection”, “as of second selection”, and other complicated constructs in the normative provisions (Article 12 and 13).
- Normative provisions should only describe the stable state that both co-legislators agree on – residual risk, 1 entity per MS, and either no cap or some form of flexible cap along EP logic with cut-off criterion and conditions to ensure hedging legal risks
- The proposal of the transitional arrangement is below, and in line 222 in 4CT.

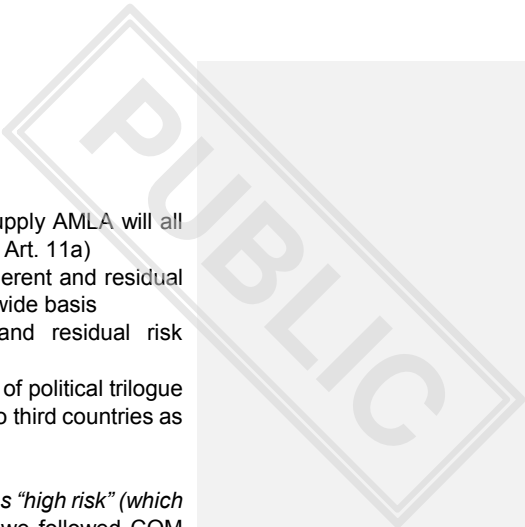
#### **The potential compromise approach in normative provisions**

*More detailed comments and explanations of the deleted/reshuffled indents and passages are in 4CT at the bottom of the doc*

- The main suggested structure and drafting features of **Article 12** are as follows:
  - o leaving the number of MSs of operation in square brackets for political decision
  - o ensuring that residual risk is clearly referenced as basis for selection, but both inherent and residual risk is scored and benchmarks for both are featured in the methodology

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<sup>1</sup> We would like to put the number in square brackets until the budgetary discussion is settled, and we are sure that AMLA will have enough resources to start with high number



- introducing an explicit obligation on supervisors and OEs to supply AMLA will all the necessary data in the process (also following discussion on Art. 11a)
- Clarifying that AMLA has to classify the risk profile for both inherent and residual risk and clarifying that for groups, the classification is at group-wide basis
- Making a distinction between inherent risk benchmarks and residual risk benchmarks in para 4
- Streamlining the benchmarks themselves in line with outcomes of political trilogue (e.g. focusing on risk from high risk third countries as opposed to third countries as a group)
- The suggested structure and drafting of **Article 13** is as follows:
  - *First paragraph states that all OEs or groups that are classified as "high risk" (which is the highest risk bracket) are considered as SOEs* → here we followed COM proposal/Council drafting, because the EP drafting implied that it is possible to pick the 40 "riskiest" out of X No, but all the groups and entities that have been assessed and classified under the methodology as "high risk" are equal, even though some may be large banking groups, and others small payment institutions
  - *Next paragraph established the 1 entity per MS rule* → we had followed Council drafting but clarified it and made sure that only high risk subsidiaries would qualify as "covering" the MS that has no other selected OEs or groups
  - *Next paragraph establishes the flexible cap along EP logic* → we modified and expanded the drafting to describe a situation where the number of entities that are high risk is significantly more than AMLA can handle in light of planning and budgetary constraints, in which case it can fix a different number of entities it will list for supervision, in consultation or agreement with supervisory authorities, and that number should be more than 40 but less than 60. After settling the number, among the entities that qualified under the first paragraph (hence not touching those that were additionally selected in MS where no entity or group qualified), AMLA will supervise those that operate in most MSs. We do not add the second element of the cut off criterion as it will not be necessary in light of the fact that AMLA will have a margin of discretion on the exact No of entities.
  - *The rest of the Article follows COM proposal on the process of listing the selection* → here we only suggested some provisional modification of timelines, as discussed in technical meetings.

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## LEGAL DRAFTING

### Article X – transitional arrangements

1. 1. For the purposes of the first assessment and selection of credit and financial institutions pursuant to Article 12 and 13, the Authority shall carry out of the assessment of inherent risk only and shall select the obliged entities for direct supervision on the basis of their inherent risk profile. The draft regulatory technical standards to be submitted to the Commission pursuant to Article 12(5) shall not include the benchmarks for the assessment of residual risk until its first review pursuant to Article 12(6).

2. Paragraph **[1b]** of Article 13 shall not apply during the first selection process.

**3. For the first selection process, in case more than [40] obliged entities would be selected pursuant to paragraph 1, the Authority shall carry out the tasks listed in article 5(2) in respect of the 40 obliged entities or groups operating in the highest number of Member States either through establishments or under the freedom to provide services.**

**In the case that the criterion referred to in the first subparagraph yields more than 40 obliged entities or groups, the Authority shall select, from the obliged entities or groups that would be selected in accordance with paragraph 1 and that actively operate in the smallest largest number of Member States, those which have the highest ratio of the volume of transactions with third countries to the total volume of transactions measured in the last financial year.**

### Article 12 – COM proposal

1. For the purposes of carrying out the tasks listed in Article 5(2), the Authority ~~shall carry out a periodic assessment of the following obliged entities, based on criteria and following the process specified in paragraphs 2 to 6 of this Article and in Article 13;~~ **in collaboration with financial supervisors, shall carry out a periodic assessment of credit and financial institutions and groups of credit and financial institutions referred to in paragraph 3 where they operate in at least [seven Member States], including the home Member State, either through establishments or under the freedom to provide services in the Member States other than the Member State where the obliged entity's head office is established.**

**1a. The Authority shall receive all necessary information from supervisory authorities, and, in exceptional cases, from the obliged entities subject to periodic assessment shall supply the Authority with any information necessary, in order to carry out the periodic assessment of individual obliged entities.**

2. The inherent **and residual** risk profile of the assessed obliged entities referred to in paragraph 1; ~~point (a) or (b)~~ shall be classified **by the Authority** as low, medium, substantial or high ~~in each jurisdiction they operate in~~, based on the benchmarks and following the methodology set out in the regulatory technical standard referred to in paragraph 5. **Where the assessed obliged entity is a group of credit institution and/or financial institutions is part of a group, the risk profile should be classified at group-wide level.**

3. The methodology for classifying the ~~inherent~~ risk profile shall be established separately for at least the following categories of obliged entities:

- (a) credit institutions;
- (b) bureaux de change;



(c) ~~undertaking for~~ collective investment ~~in transferable securities and alternative investment funds~~ undertakings;

(d) credit providers other than credit institutions;

(e) e-money institutions;

(f) investment firms;

(g) payments service providers;

(h) life insurance undertakings;

(i) life insurance intermediaries;

(j) ~~other financial institutions~~ crypto-asset service providers;

(k) Other financial institutions.

4. For each category of obliged entities referred to in paragraph 43, the benchmarks **for the assessment of inherent risk** in the assessment methodology shall be based on the risk factor categories related to customer, products, services, transactions, delivery channels and geographical areas. **The assessment methodology shall also include benchmarks for the assessment of risk mitigation and management systems put in place by the obliged entities for the purposes of the assessment of their residual risk.** The benchmarks shall be established for at least the following indicators of inherent risk in any Member State they operate in:

(a) with respect to customer-related risk: the share of non-resident customers from third countries identified and designated pursuant to in Chapter III Section 2 of [please insert reference – proposal for Anti-Money Laundering Regulation]; the presence and share of customers identified as Politically Exposed persons ('PEPs');

(b) with respect to products and services offered:

(i) the significance and the trading volume of products and services identified as the most potentially vulnerable to money laundering and terrorist financing risks at the level of the internal market in the supra-national risk assessment or at the level of the country in the national risk assessment;

~~(iii)~~ (ii) for money remittance service providers, the significance of aggregate annual emission and reception activity of each remitter in ~~in~~ countries identified pursuant and designated as referred to in Chapter III Section 2 of Regulation [please insert reference to Anti-Money Laundering Regulation];

(iii) the relative volume of products, services or transactions that might favour anonymity, including offer considerable level of protection of client's privacy and identity or other form of anonymity, such as crypto-assets which have in-built anonymisation;

(c) with respect to geographical areas:

(i) the annual volume of correspondent banking services, or correspondent crypto-asset services, provided by Union financial sector entities in third countries ~~and jurisdictions identified pursuant to Chapter III Section 2 of Regulation [please insert reference to Anti-Money Laundering Regulation]~~;

(ii) the number **[and share]** of correspondent banking ~~clients~~relationships or crypto-asset clients from in third countries ~~and jurisdictions identified and designated as referred pursuant to in~~Chapter III Section 2 of Regulation [OP please insert reference to for Anti-Money Laundering Regulation].

5. The Authority shall develop draft regulatory technical ~~standards setting out the methodology with the benchmarks referred to in paragraph 4 for classifying the inherent risk profile of any cross border credit or financial institution in each Member State it operates in as low, medium, substantial or high~~standard specifying:

(a) the assessment criteria referred to in the first paragraph, including criteria under which an obliged entity would be considered to actively provide services through the free provision of services for the purposes of the periodic assessment;

(b) the methodology with the benchmarks referred to in paragraph 4 for classifying the inherent and the residual risk profile of credit or financial institution as low, medium, substantial or high.

**Commented** [redacted]: After some internal reflection, we concluded that we don't need AMLA to judge whether the passport has been activated - mere passport does not mean that the freedom to provide services was exercised. We will propose a recital to that end and can explain more in the meeting

The Authority shall submit the draft regulatory technical standards to the Commission by [1 January 2026].

6. The Authority shall review the benchmarks and methodology at least every three years. Where amendments are required, the Authority shall submit amended draft regulatory technical standards to the Commission.

#### Article 13 – COM proposal

1. The ~~following obliged entities~~credit institutions, financial institutions and groups thereof whose residual risk profile has been classified as high pursuant to Article 12 shall qualify as a selected obliged entities~~y~~.

1a. Where more than 40 selected obliged entities are identified pursuant to paragraph 1, the Authority may, in consultation with the supervisory authorities, agree on limiting the selection to a specific different number of entities or groups [that shall not exceed 60].

In deciding on the number of selected obliged entities, the Authority shall take into account its own resources capacity to allocate or additionally hire the necessary number of supervisory and support staff and shall ensure that the increase in the financial and human resources is feasible.

Pursuant to the decision of the maximum number, the selected obliged entities shall be the obliged entities and groups among those qualifying under paragraph 1, which are operating in the highest number of Member States either through establishments or under the freedom to provide services.

1b. Where in a Member state no credit, financial institution or a group of credit and/or financial institutions which is established, authorised or registered, or has a subsidiary therein whose risk profile is classified as high, qualifies as a selected obliged entity pursuant to paragraphs 1 and 1a, an additional selection process shall be carried out by the Authority in that Member State, based on methodology referred to in Article 12(5).

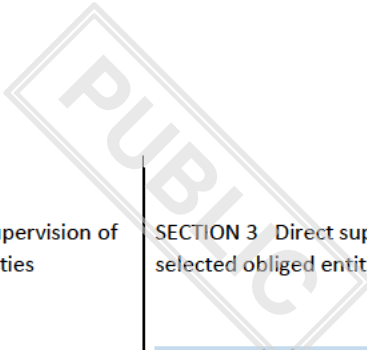
Following the additional selection process, the credit or financial institution or a group of credit and/or financial institutions established or registered in this Member State whose risk profile qualifies as high shall qualify as a selected obliged entity.

**Commented** [redacted]: We actually do not really need an upper limit, that's why we left it in brackets

*Where ~~if~~ several credit or financial institutions or groups thereof in the Member State in question have a high risk profile, then the selected obliged entity shall be the one operating in the highest number of Member States through either free establishment or active free provision of services. If several credit or financial institutions or groups thereof operate in the same number of Member States, the entity with the highest ratio of transaction volume with third countries to total transaction volume as measured over the last financial reporting year shall qualify as a selected obliged entity.*

2. The Authority shall commence the first selection process ~~[by~~ 1 July 2027~~5]~~ and shall conclude the selection within ~~[one six]~~ month~~s]~~. The selection shall be made every three years after the date of commencement of the first selection, and shall be concluded within ~~[one six]~~ month in each selection ~~period~~process. The list of the selected obliged entities shall be published by the Authority without undue delay upon completion of selection process. The Authority shall commence the direct supervision of the selected obliged entities ~~[five six]~~ months after publication of the list.

3. A selected obliged entity shall remain subject to direct supervision by the Authority until the Authority commences the direct supervision of selected obliged entities based on a list established for the subsequent selection round which no longer includes that obliged entity.



|               |   |   |   |  |
|---------------|---|---|---|--|
| 217           | SECTION 3 Direct supervision of selected obliged entities   | SECTION 3 Direct supervision of selected obliged entities   | SECTION 3 Direct supervision of selected obliged entities   | SECTION 3 Direct supervision of selected obliged entities<br><br>Text Origin: Commission Proposal  |
| Article 12    |   |   |   |  |
| 218           | Article 12<br>Assessment of obliged entities for the purposes of selection for direct supervision | Article 12<br>Assessment of obliged entities for the purposes of selection for direct supervision | Article 12<br>Assessment of <u>financial sector</u> obliged entities for the purposes of selection for direct supervision | Article 12<br>Assessment of <del>obliged entities</del> <u>credit and financial institutions</u> for the purposes of selection for direct supervision<br><br>Text Origin: EP Mandate<br><br>TM9 05/07/2023 |
| Article 12(1) |   |   |   |  |

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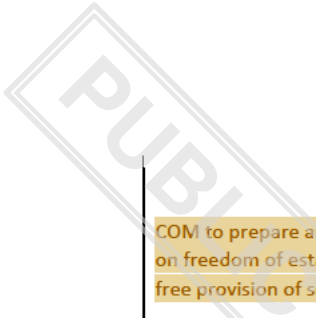
1. For the purposes of carrying out the tasks listed in Article 5(2), the Authority shall carry out a periodic assessment of the following obliged entities, based on criteria and following the process specified in paragraphs 2 to 6 of this Article and in Article 13:

1. For the purposes of carrying out the tasks listed in Article 5(2), the Authority shall carry out a periodic assessment ~~of the following obliged entities,~~ based on criteria and following the process specified in paragraphs 2 to 6 of this Article and in Article 13: of credit institutions, financial institutions, groups of credit and financial institutions referred to in paragraph 3 where, in at least seven Member States, including the home Member State, they provide services either via establishments referred to in article 2 (8) of [AMLD], or actively provide services through free provision of services.

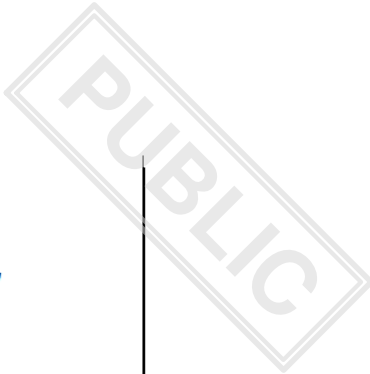
1. For the purposes of carrying out the tasks listed in Article 5(2), the Authority, with the collaboration of financial supervisors in accordance with paragraph 1b of this Article, shall carry out a periodic assessment of the ~~following~~ obliged entities, listed in paragraph 3 of this Article based on criteria and following the process specified in paragraphs 2 to 6 of this Article and in Article 13: where they operate establishments as defined in Article 2(8) of [proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final], or under the freedom to provide services, in at least four Member States, including the Member State of establishment.

1. For the purposes of carrying out the tasks listed in Article 5(2), the Authority ~~shall carry out a periodic assessment of the following obliged entities, based on criteria and following the process specified in paragraphs 2 to 6 of this Article and in Article 13,~~ in collaboration with financial supervisors, shall carry out a periodic assessment of credit and financial institutions and groups of credit and financial institutions referred to in paragraph 3 where they operate in at least [seven Member States], including the home Member State, either through establishments or under the freedom to provide services, irrespective of whether such freedom is exercised through a physical presence in the Member States other than the Member State where the obliged entity's head office is established.

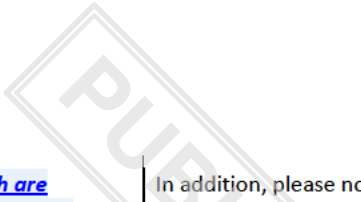
**Commented** [REDACTED] We take over Council text on understanding that the group-wide approach of assessment is acceptable for EP if we ensure that 1 entity per MS rule would apply only in case the subsidiary of a group qualifies as entity in a MS only if that subsidiary is high risk - see appropriate change below



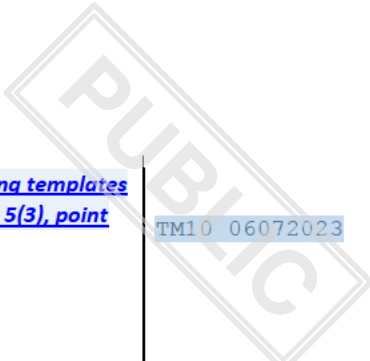
|                          |  |  |         |  |
|--------------------------|--|--|---------|--|
|                          |  |  |         | <p>COM to prepare an explanatory note on freedom of establishment and free provision of services,</p> <p>and CONS to prepare an explanatory note on Council methodology and its impact (groups issue)</p> <p>Text Origin: EP Mandate</p> <p>TM9 05/07/2023</p> |
| Article 12(1), point (a) |  |  |         |  |
| 220                      | (a) credit institutions that are established in at least seven Member States, including the Member State of establishment and the Member States where they are operating via subsidiaries or branches; | (a) <del>credit institutions that are established in at least seven Member States, including the Member State of establishment and the Member States where they are operating via subsidiaries or branches;</del> <u>deleted</u> | deleted |  |
| Article 12(1), point (b) |  |  |         |  |



|                                  |  |   |  |  |
|----------------------------------|--|---|--|--|
| 221                              | (b) other financial institutions that operate in at least ten Member States, including the Member State of establishment, another Member State where they are operating via a subsidiary or a branch, and all other Member States where they are operating by means of direct provision of services or via a network of representative agents. | <del>(b) other financial institutions that operate in at least ten Member States, including the Member State of establishment, another Member State where they are operating via a subsidiary or a branch, and all other Member States where they are operating by means of direct provision of services or via a network of representative agents.</del><br><del>deleted</del> | deleted  |  |
| <i>Article 12(1), point (ba)</i> |  |   |  |  |
| 221a                             |  |   | <u>1a. In cases where all of the obliged entities established in a particular Member State operate in fewer than four Member States, whether through establishments or through the freedom to provide services, the periodic assessment referred to in paragraph 1 shall be carried out on the obliged entities listed</u> | We understand that this is linked to 1 entity per MS where the potential compromise discussed is that Council approach could be accommodated on condition of high risk sub<br><br>In that case, we do not need this provision. |



|                           |  |   |  |
|---------------------------|--|---|--|
|                           |  | <p><u><a href="#">in paragraph 3 which are established in that Member State.</a></u></p>  | <p>In addition, please note one conceptual difference – this makes assessment wider and more complicated for AMLA. A MS may <i>have</i> a group or OE that is HQ-ed there and active in 4/5/6/7 MS, but that group or OE may not qualify, and therefore AMLA may still need to do the assessment of all OEs in that MS.</p> <p>To be discussed under article 13</p> <p>TM10 06072023</p> |
| Article 12(1), point (bb) |  |   |  |
| 221b                      |  | <p><u><a href="#">1b. The Authority shall receive all necessary information from supervisory authorities, and, in exceptional cases, from the obliged entities, in order to carry out the periodic assessment of individual obliged entities. That information shall be included in</a></u></p> | <p><u><a href="#">(bb) [placeholder]</a></u></p> <p>To be discussed together with art. 11</p>  |



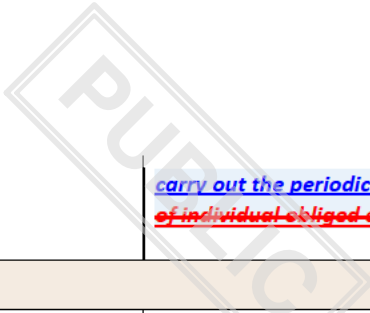
[the common reporting templates referred to in Article 5\(3\), point \(e\).](#)

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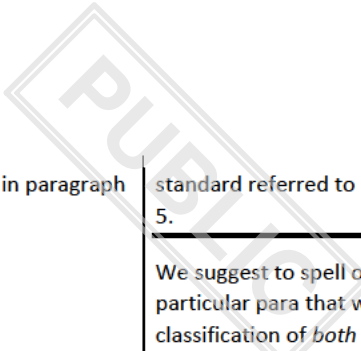
We think the first part of this amendment can be included, can act as legal safeguard.

The second part may not be necessary – when the common reporting platform (as discussed under Art. 44a) is in place, then the data can be extracted from there if any of it is relevant, so it won't have to be “provided” if AMLA is hosting the platform. See our comments above on Article 11 and similar inclusion there.

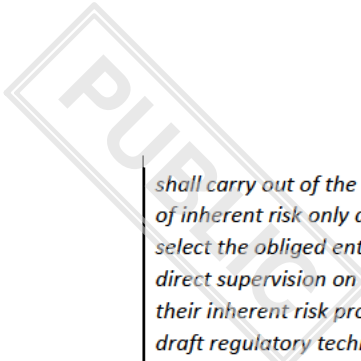
[1a. The Authority shall receive all necessary information from supervisory authorities, and, in exceptional cases, from the obliged entities subject to periodic assessment shall supply the Authority with any information necessary, in order to](#)



|               |   |   |  |  |
|---------------|---|---|--|--|
|               |   |   |  | <u>carry out the periodic assessment of individual obliged entities.</u>   |
| 221c          |   |   | <u>1c. The Authority shall keep the relevant non-AML/CFT authorities informed of the assessments provided for in paragraphs 1, (1a) and (1b) in cases where the obliged entities fall within their supervisory remits.</u>   | We understand that it would be acceptable if we offer the relevant authorities outcomes of the more regular risk assessments conducted by all supervisors under AMLD, and there is consequently no need for this provision here  |
| Article 12(2) |   |   |  |  |
| 222           | 2. The inherent risk profile of the assessed obliged entities referred to in paragraph 1, point (a) or (b) shall be classified as low, medium, substantial or high in each jurisdiction they operate in, based on the benchmarks and following the methodology set out in the regulatory technical standard referred to in paragraph 5. | 2. The <del>inherent</del> risk profile of the assessed obliged entities referred to in paragraph 1, <del>point (a) or (b)</del> shall be classified as low, medium, substantial or high in each jurisdiction they operate in, based on the benchmarks and following the methodology set out in the regulatory technical standard referred to in paragraph 5. | 2. <u>After having assessed the residual</u> <del>The inherent</del> risk profile of the assessed obliged entities referred to in paragraph 1, <del>point (a) or (b)</del> <u>the Authority shall be classified</u> <del>classify them</del> as low, medium, substantial or high in each jurisdiction they operate in, based on the benchmarks and following the methodology set out in the regulatory technical | 2. The inherent <u>and residual</u> risk profile of the assessed obliged entities referred to in paragraph 1, <del>point (a) or (b)</del> shall be classified <u>by the Authority</u> as low, medium, substantial or high <del>in each jurisdiction they operate in,</del> based on the benchmarks and following the methodology set out in the regulatory technical |



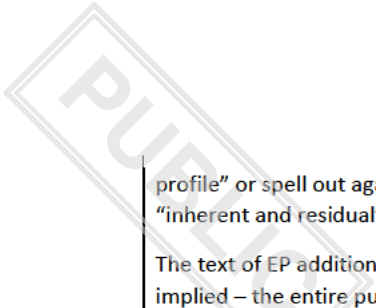
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|  |  |  | <p>standard referred to in paragraph 5.</p> | <p>standard referred to in paragraph 5.</p> <hr/> <p>We suggest to spell out in this particular para that we have classification of <i>both</i> inherent and residual risk. That is in case any case what will have to be done in practice. Then in Article 13 we spell out that those whose <i>residual</i> risk profile is high, will be selected.</p> <p>Subsequently and if agreed, for the first selection we can just have a transitional clause at the end of the Reg to allow for inherent risk only. We do the same with 1 entity per MS – it applies by default, except for first selection, and the agreed cap for the first selection.</p> <p><i>“Article X – transitional arrangements”</i></p> <p><i>1. For the purposes of the first assessment and selection of credit and financial institutions pursuant to Article 12 and 13, the Authority</i></p> |
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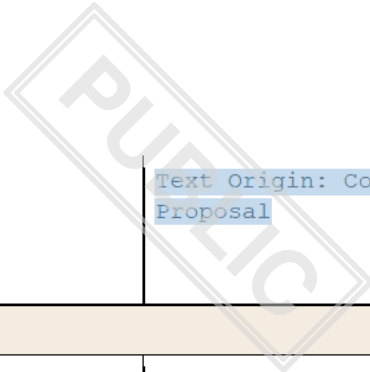
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|  |  |  |  | <p>shall carry out of the assessment of inherent risk only and shall select the obliged entities for direct supervision on the basis of their inherent risk profile. The draft regulatory technical standards to be submitted to the Commission pursuant to Article 12(5) shall not include the benchmarks for the assessment of residual risk until its first review pursuant to Article 12(6).</p> <p>2. Paragraph [X on 1 entity per MS] of Article 13 shall not apply during the first selection process.</p> <p><u>3. For the first selection process, in case more than 40 obliged entities would be selected pursuant to paragraph 1, the Authority shall carry out the tasks listed in article 5(2) in respect of the 40 obliged entities or groups operating in the highest number of Member States either through establishments or under the freedom to provide services.</u></p> |
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|               |  |   |   | <p><u>In the case that the criterion referred to in the first subparagraph yields more than 40 obliged entities or groups, the Authority shall select, from the obliged entities or groups that would be selected in accordance with paragraph 1 and that actively operate in the largest number of Member States, those which have the highest ratio of the volume of transactions with third countries to the total volume of transactions measured in the last financial year."</u></p> |
| Article 12(3) |  |   |   |  |
| 223           | <p>3. The methodology for classifying the inherent risk profile shall be established separately for at least the following categories of obliged entities:</p> | <p>3. The methodology for classifying the <del>inherent</del> risk profile shall be established separately for at least the following categories of obliged entities:</p> | <p>3. The methodology for classifying the <del>inherent</del> residual risk profile shall be established separately for at least the following categories of obliged entities, <u>taking into account the specificities of each sector:</u></p> | <p>3. The methodology for classifying the <del>inherent</del> risk profile shall be established separately for at least the following categories of obliged entities:</p> <p>=====</p> <p>Explanation: we can either follow Council by only referencing "risk</p>  |

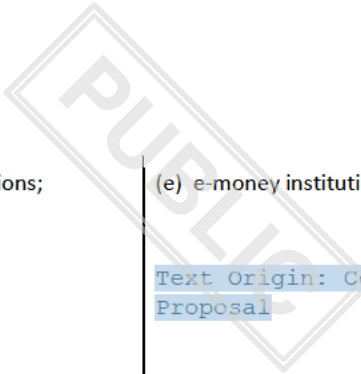


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|                          |                          |                          |                          | <p>profile” or spell out again “inherent and residual”.</p> <p>The text of EP addition is already implied – the entire purpose of forcing AMLA to have methodology per sector is because each sector has its specificities and hence should be considered separately (as they are now).</p> |
| Article 12(3), point (a) |                          |                          |                          |   |
| 224                      | (a) credit institutions; | (a) credit institutions; | (a) credit institutions; | (a) credit institutions;<br><br>Text Origin: Commission Proposal  |
| Article 12(3), point (b) |                          |                          |                          |   |
| 225                      | (b) bureaux de change;   | (b) bureaux de change;   | (b) bureaux de change;   | (b) bureaux de change;  |

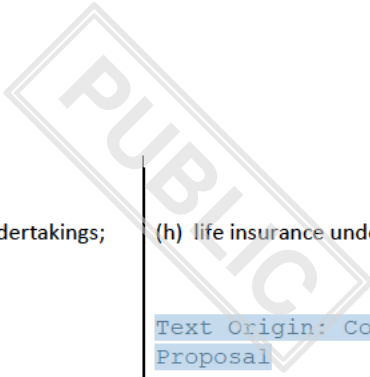


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| Article 12(3), point (c) |  |  |   |   |
| 226                      | (c) undertaking for collective investment in transferable securities and alternative investment funds; | (c) <del>undertaking for</del> collective investment <del>in transferable securities and alternative investment funds</del> <u>undertaking</u> ; | (c) <del>undertaking for</del> collective investment <del>in transferable securities and alternative investment funds</del> <u>undertakings</u> ; | (c) <del>undertaking for</del> collective investment <del>in transferable securities and alternative investment funds</del> <u>undertakings</u> ;<br><br>We can agree |
| Article 12(3), point (d) |  |  |   |   |
| 227                      | (d) credit providers other than credit institutions;   | (d) credit providers other than credit institutions;   | (d) credit providers other than credit institutions;  | (d) credit providers other than credit institutions;<br><br>Text Origin: Commission Proposal  |
| Article 12(3), point (e) |  |  |   |   |
| 228                      |  |  |   |   |

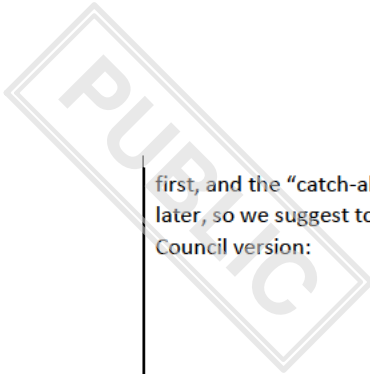
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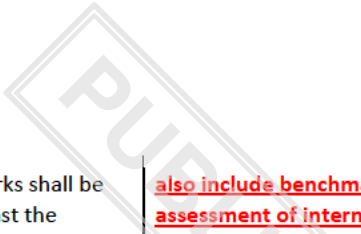
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|                          | (e) e-money institutions;       | (e) e-money institutions;       | (e) e-money institutions;       | (e) e-money institutions;<br>Text Origin: Commission<br>Proposal       |
| Article 12(3), point (f) |                                 |                                 |                                 |  |
| 229                      | (f) investment firms;           | (f) investment firms;           | (f) investment firms;           | (f) investment firms;<br>Text Origin: Commission<br>Proposal           |
| Article 12(3), point (g) |                                 |                                 |                                 |  |
| 230                      | (g) payments service providers; | (g) payments service providers; | (g) payments service providers; | (g) payments service providers;<br>Text Origin: Commission<br>Proposal |
| Article 12(3), point (h) |                                 |                                 |                                 |  |



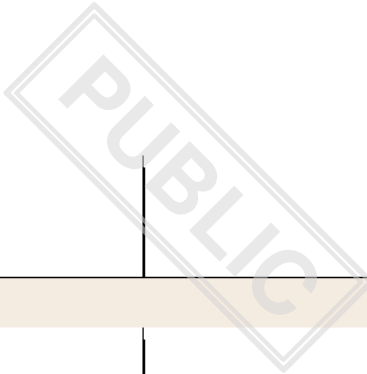
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| 231                      | (h) life insurance undertakings;   | (h) life insurance undertakings;  | (h) life insurance undertakings;   | (h) life insurance undertakings;<br><br>Text Origin: Commission Proposal   |
| Article 12(3), point (i) |                                    |   |                                    |  |
| 232                      | (i) life insurance intermediaries; | (i) life insurance intermediaries;  | (i) life insurance intermediaries; | (i) life insurance intermediaries;<br><br>Text Origin: Commission Proposal   |
| Article 12(3), point (j) |                                    |   |                                    |  |
| 233                      | (j) other financial institutions.  | (j) <del>other financial institutions.</del> <u>crypto-asset service providers;</u> | (j) other financial institutions.; | (j) <del>other financial institutions.</del> <u>crypto-asset service providers;</u><br><br>The amendments in these two lines are identical by nature, but it's more logical to mention CASPs |



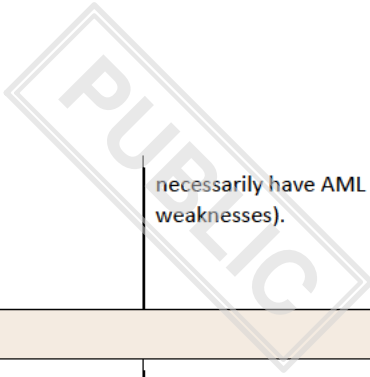
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|                          |  |   |   | first, and the “catch-all” category later, so we suggest to follow Council version:   |
| Article 12(3), point (k) |  |   |   |   |
| 233a                     |  | <u>(k) Other financial institutions.</u>  | <u>(ia) crypto-asset service providers.</u>   | <u>(k) Other financial institutions.</u>  |
| Article 12(4)            |  |   |   |   |
| 234                      | 4. For each category of obliged entities referred to in paragraph 4, the benchmarks in the assessment methodology shall be based on the risk factor categories related to customer, products, services, transactions, delivery channels and geographical areas. The benchmarks shall be established for at least the following | 4. For each category of obliged entities referred to in paragraph <del>43</del> , the benchmarks in the assessment methodology shall be based on the risk factor categories related to customer, products, services, transactions, delivery channels and geographical areas. The benchmarks shall be established for at least the following | 4. For each category of obliged entities referred to in paragraph <del>43</del> , the benchmarks in the assessment methodology shall be based on the risk factor categories related to customer, products, services, transactions, delivery channels, <u>geographical areas, and the risk management systems put in place by the obliged entities</u> <del>and geographical</del> | 4. For each category of obliged entities referred to in paragraph <del>43</del> , the benchmarks <u>for the assessment of inherent risk</u> in the assessment methodology shall be based on the risk factor categories related to customer, products, services, transactions, delivery channels and geographical areas. <u>The assessment methodology shall</u> |



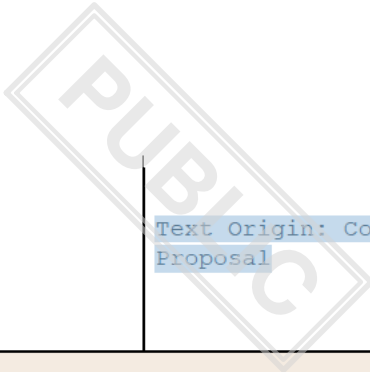
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|  | indicators of inherent risk in any Member State they operate in: | indicators of inherent risk in any Member State they operate in: | <del>areas</del> . The benchmarks shall be established for at least the following indicators of <del>inherent</del> <u>residual</u> risk in any Member State they operate in: | <u>also include benchmarks for the assessment of internal policies, procedures and controls put in place by the obliged entities for the purposes of the assessment of their residual risk.</u> The benchmarks shall be established for at least the following indicators of inherent risk in any Member State they operate in:<br><hr/> <b>Comment: risk factor categories related to customer, products, services, transactions, delivery channels and geographical areas are all related to inherent risk only.</b><br><br>Therefore the last sentence of the provision has to mention <i>inherent</i> risk. We understand that the EP wants to include residual risk assessment, but ideally that should be done more explicitly to point out what are the benchmarks for inherent risk based on and what are the benchmarks for residual risk based on. |
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| Article 12(4), point (a) |  |   |   |   |
| 235                      | <p>(a) with respect to customer-related risk: the share of non-resident customers, the presence and share of customers identified as Politically Exposed persons ('PEPs');</p> | <p>(a) with respect to customer-related risk: the <del>share of non-resident customers, the</del> presence and share of customers identified as Politically exposed persons ('PEPs');</p> | <p>(a) with respect to customer-related risk: the share of non-resident customers <u>from third countries</u>, the presence and share of customers identified as Politically Exposed persons ('PEPs') <u>and the presence and share of customers located in jurisdictions listed in Annex I to the EU list of non-cooperative jurisdictions for tax purposes, in jurisdictions continuously listed in Annex II to the EU list of non-cooperative jurisdictions for tax purposes for a period of more than three years, and in jurisdictions identified and designated as referred to in Chapter III Section 2 of [please insert reference – proposal for Anti-Money Laundering Regulation]</u>;</p> | <p>(a) with respect to customer-related risk: the share of non-resident customers <u>from third countries and jurisdictions identified and designated as referred to in Chapter III Section 2 of [please insert reference – proposal for Anti-Money Laundering Regulation]</u>; the presence and share of customers identified as Politically Exposed persons ('PEPs');</p> <p>Comment: our understanding of potential compromise is to make sure that we only refer to non-resident customers from third countries identified under AMLR, those on black and grey lists, but not all third countries or third countries from other frameworks, such as non-cooperative tax jurisdictions (which do not</p> |

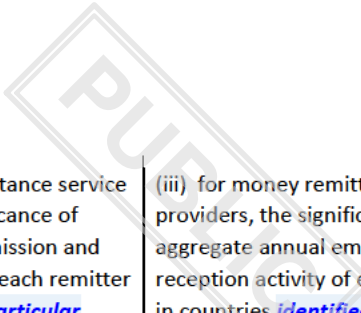


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|                             |  |  |  | necessarily have AML weaknesses).  |
| Article 12(4), point (b)    |  |  |  |  |
| 236                         | (b) with respect to products and services offered:   | (b) with respect to products and services offered:   | (b) with respect to products and services offered:   | (b) with respect to products and services offered:<br><br>Text Origin: Commission Proposal   |
| Article 12(4), point (b)(i) |  |  |  |  |
| 237                         | (i) the significance and the trading volume of products and services identified as the most potentially vulnerable to money laundering and terrorist financing risks at the level of the internal market in the supra-national risk assessment or at the level of the country in the national risk assessment; | (i) the significance and the trading volume of products and services identified as the most potentially vulnerable to money laundering and terrorist financing risks at the level of the internal market in the supra-national risk assessment or at the level of the country in the national risk assessment; | (i) the significance and the trading volume of products and services identified as the most potentially vulnerable to money laundering and terrorist financing risks at the level of the internal market in the supra-national risk assessment or at the level of the country in the national risk assessment; | (i) the significance and the trading volume of products and services identified as the most potentially vulnerable to money laundering and terrorist financing risks at the level of the internal market in the supra-national risk assessment or at the level of the country in the national risk assessment; |



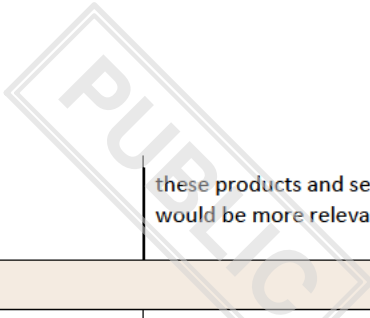
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| Article 12(4), point (b)(ii)  |   |  |   |   |
| 238                           | (ii) the volume of the deposit and payment account services provided under the freedom to provide services; | (ii) <del>the volume of the deposit and payment account services provided under the freedom to provide services;</del><br><u>deleted</u> | (ii) the volume of the deposit and payment account services provided under the freedom to provide services, <u>together with other products and services identified as potentially vulnerable to ML/TF risks;</u> | (ii) <del>the volume of the deposit and payment account services provided under the freedom to provide services;</del><br><u>deleted</u><br><br>This indent has been deleted because now we will have OEs assessed and potentially selected which provide deposit and payment service accounts <i>exclusively</i> under FPS – so it doesn't add value anymore as a benchmark; with respect to EP addition, we believe it's part of the indent above |
| Article 12(4), point (b)(iii) |   |  |   |   |
| 239                           |   |  |   |   |

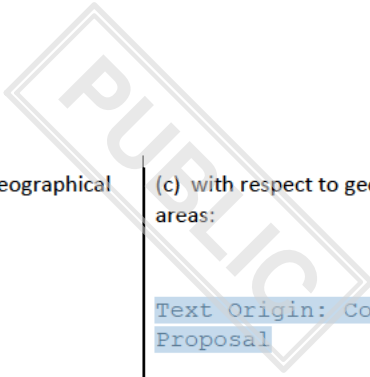


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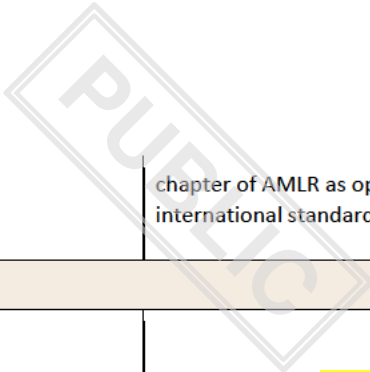
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| 239a |  |  | <p><u>(iia) the volume of products or transactions that might favour anonymity, including crypto-assets which have in-built anonymisation;</u></p> | <p><u>(iia) the relative volume of products, services or transactions that might favour anonymity, including offer considerable level of protection of client's privacy and identity or other form of anonymity, such as crypto-assets which have in-built anonymisation;</u></p> <p>====</p> <p>Comment: We only suggest to refine this benchmark a bit:</p> <p>We understand that it's meant not for single-product providers such as CASPs (because the one-two-three products they offer are attractive because of anonymity, so it's their entire business model), but rather for institutions in which products that offer anonymity increase their level of risk (e.g. private banking in a retail bank) → in that respect, perhaps a relative volume of</p> |
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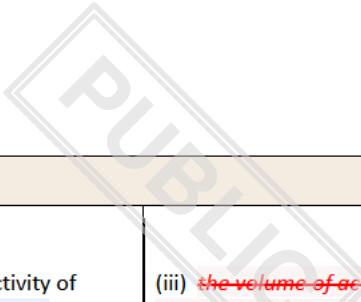
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|                          |  |  |  | these products and services would be more relevant  |
|                          |  |  |  |   |
| 239b                     |  |  | <u>(iiib) the significance of privacy wallets, mixers and tumblers and other anonymising software or techniques used for obfuscating transactions;</u> | <u>(iiib) the significance of privacy wallets, mixers and tumblers and other anonymising software or techniques used for obfuscating transactions;</u><br>=====<br>Deleted just because we believe that this would be covered by the previous indent, especially with our suggested extension to services and broader reference to protection of privacy<br><br>it's also problematic because "the significance" is not a clear concept, so relative volume (which points to the significance for the business as a whole) is a clearer benchmark |
| Article 12(4), point (c) |  |  |  |   |
| 240                      |  |  |  |   |



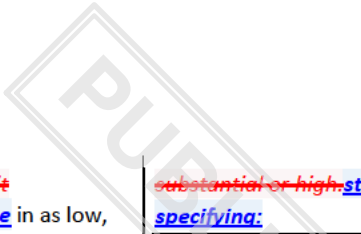
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|                             | (c) with respect to geographical areas:   | (c) with respect to geographical areas:   | (c) with respect to geographical areas:  | (c) with respect to geographical areas:<br><br>Text Origin: Commission Proposal  |
| Article 12(4), point (c)(i) |   |   |  |  |
|                             | (i) the annual volume of correspondent banking services provided by Union financial sector entities in third countries; | (i) the annual volume of correspondent banking services provided by Union financial sector entities in third countries; | (i) the annual volume of correspondent banking services, <u>or correspondent crypto-asset services</u> , provided by Union financial sector entities in third countries, <u>in particular those identified as vulnerable in its AML/CFT detection and prevention systems under international standards</u> ; | (i) the annual volume of correspondent banking services, <u>or correspondent crypto-asset services</u> , provided by Union financial sector entities in third countries <del>and jurisdictions</del> <u>identified and designated as referred pursuant to in Chapter III Section 2 of Regulation [please insert reference to Anti-Money Laundering Regulation]</u><br><br>=====<br><br>We could agree with EP focus on HRTC, subject to Council views<br><br>We would only suggest the same reference as above to relevant |



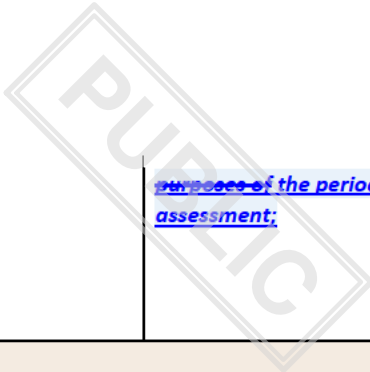
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|                              |   |  |  | chapter of AMLR as opposed to international standards   |
| Article 12(4), point (c)(ii) |   |  |  |   |
| 242                          | (ii) the number and share of correspondent banking clients from third countries with structural weaknesses in their AML systems identified by global standard setting bodies; | (ii) the number <del>and share</del> of correspondent banking <del>clients</del> <u>relationships</u> from third countries with structural weaknesses in their AML systems identified by global standard setting bodies; | (ii) the number and share of correspondent banking <u>or crypto-asset</u> clients from third countries with structural weaknesses in their AML systems identified by global standard setting bodies; | (ii) the number [and share] of correspondent banking <del>clients</del> <u>relationships</u> <u>or crypto-asset</u> clients from in third countries <del>and jurisdictions</del> <u>identified and designated as referred pursuant to in Chapter III Section 2 of Regulation [OP please insert reference to for Anti-Money Laundering Regulation]</u><br><br>=====<br><br>Comment: We are not certain anymore why the Council deleted the "share", but reference to "relationships" is indeed more adequate<br><br>Further we suggest to follow the same formulation as above for the HRTC countries, for the purposes of consistency |



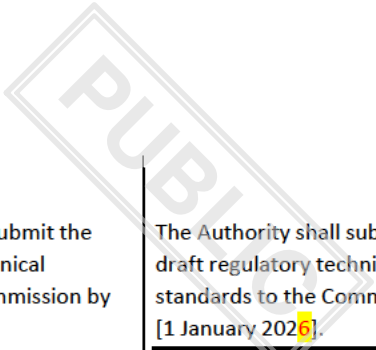
| Article 12(4), point (c)(iii)    |   |  |  |  |
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| 243                              | (iii) the volume of activity of virtual assets service providers registered or licensed in third countries and operating as financial institutions in the Union.  | (iii) <del>the volume of activity of virtual assets service providers registered or licensed in third countries and operating as financial institutions in the Union.</del> <u>deleted</u>   | (iii) the volume of activity of <del>virtual assets</del> <u>crypto-asset</u> service providers registered or licensed in third countries and operating as financial institutions in the Union.  | (iii) <del>the volume of activity of virtual assets service providers registered or licensed in third countries and operating as financial institutions in the Union.</del> <u>deleted</u><br><br>This amendment is not relevant anymore since we are covering CASPs   |
| Article 12(5), introductory part |   |  |  |  |
| 244                              | 5. The Authority shall develop draft regulatory technical standards setting out the methodology with the benchmarks referred to in paragraph 4 for classifying the inherent risk profile of any cross-border credit or financial institution in each Member State | 5. The Authority shall develop draft regulatory technical <del>standards setting out the methodology with the benchmarks referred to in paragraph 4 for classifying the inherent risk profile of any cross-border credit or financial institution in each Member State</del> <u>it operates in as low, medium,</u> | 5. The Authority shall develop draft regulatory technical standards setting out the methodology with the benchmarks referred to in paragraph 4 for classifying the inherent <u>residual</u> risk profile of <del>any cross-border credit or financial institution</del> <u>the obliged entities listed in paragraph 3</u> in | 5. The Authority shall develop draft regulatory technical <del>standards setting out the methodology with the benchmarks referred to in paragraph 4 for classifying the inherent risk profile of any cross-border credit or financial institution in each Member State</del> <u>it operates in as low, medium,</u> |



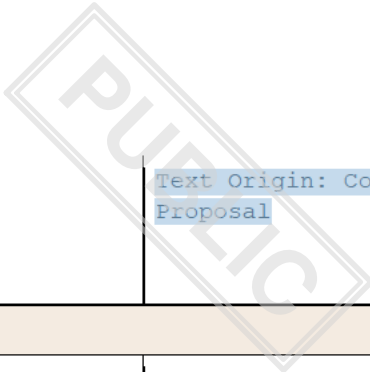
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|                          | it operates in as low, medium, substantial or high. | <del>substantial or high</del> <u>standard specifying:</u>  | each Member State <del>it</del> <del>operates</del> <u>they operate</u> in as low, medium, substantial or high. | <del>substantial or high</del> <u>standard specifying:</u><br><br>Comment: In our understanding of the potential compromise, we need to take over the Council version of the mandate, with a slight modification in line 244b – referring explicitly to methodology for classifying both inherent and residual risk. That is what is done in practice, avoids mixing the benchmarks for inherent and residual risk, and allows to have the first selection based on residual risk, if agreed (based on transitional provision suggested above). |
| Article 12(5), point (a) |   |   |   |   |
| 244a                     |   | <u>(a) the assessment criteria referred to in the first paragraph, including criteria under which an obliged entity would be considered to actively provide services through the free</u> |   | <u>(a) the assessment criteria referred to in the first paragraph, including criteria under which an obliged entity would be considered to actively provide services through the free provision of services for the</u>   |



|                                    |  |  |  |  |
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|                                    |  | <u>provision of services for the purposes of the periodic assessment;</u>  |  | <u>purposes of the periodic assessment;</u>  |
| Article 12(5), point (b)           |  |  |  |  |
| 244b                               |  | <u>(b) the methodology with the benchmarks referred to in paragraph 4 for classifying the risk profile of credit or financial institution as low, medium, substantial or high.</u> |  | <u>(b) the methodology with the benchmarks referred to in paragraph 4 for classifying the inherent and the residual risk profile of credit or financial institution as low, medium, substantial or high.</u> |
| Article 12(5), first subparagraph  |  |  |  |  |
| 244c                               |  | <u>Where a credit institution or financial institution is part of a group, the risk profile should be classified at group-wide level.</u>  |  | Incorporated at the end of para 2 above<br><del><u>Where a credit institution or financial institution is part of a group, the risk profile should be classified at group-wide level.</u></del>              |
| Article 12(5), second subparagraph |  |  |  |  |

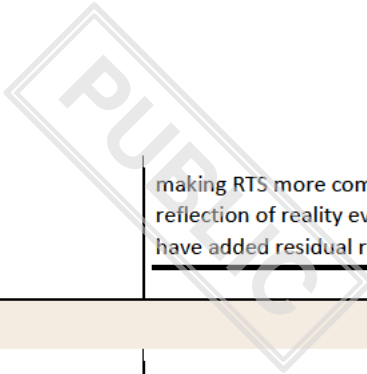


|                                   |   |   |   |   |
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| 245                               | The Authority shall submit the draft regulatory technical standards to the Commission by [1 January 2025].  | The Authority shall submit the draft regulatory technical standards to the Commission by <del>1</del> January 2025 <del>].</del>                                | The Authority shall submit the draft regulatory technical standards to the Commission by [1 January 2025].  | The Authority shall submit the draft regulatory technical standards to the Commission by [1 January 202 <del>5</del> ].<br><br>Comment: this has to be discussed at the end of negs, in the original proposal we have given 2 years for development, we need to give at least 1,5 years<br><br>Keep in mind that this mandate has become much more complex given the expanded scope (direct provision of services, CAPSs) and the group-wide approach |
| Article 12(5), third subparagraph |   |   |   |   |
| 246                               | The Commission is empowered to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 38 of this Regulation. | The Commission is empowered to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 38 of this Regulation. | The Commission is empowered to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 38 of this Regulation. | The Commission is empowered to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 38 of this Regulation.   |

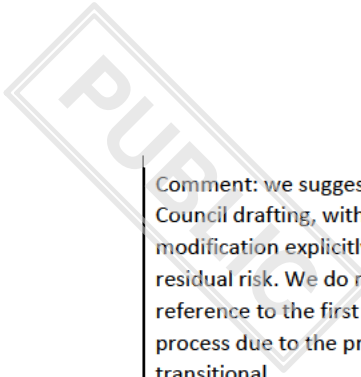


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Proposal

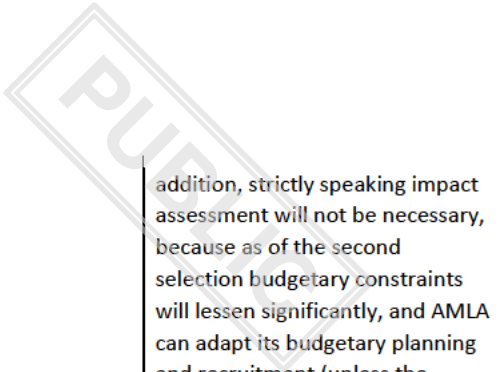
| Article 12(6) |   |  |   |  |
|---------------|---|--|---|--|
| 247           | <p>6. The Authority shall review the benchmarks and methodology at least every three years. Where amendments are required, the Authority shall submit amended draft regulatory technical standards to the Commission.</p> | <p>6. The Authority shall review the benchmarks and methodology at least every three years. <u>For the first selection process referred to in Article 13, the Authority shall develop benchmarks for the assesemnt of the inherent risk profile of obliged entities. In addition, and before the end of the first selection process, the Authority shall develop benchmarks for assessment of the residual risk of obliged entities.</u> Where amendments are required, the Authority shall submit amended draft regulatory technical standards to the Commission.</p> | <p>6. The Authority shall review the benchmarks and methodology at least every three years. Where amendments are required, the Authority shall submit amended draft regulatory technical standards to the Commission.</p> | <p>6. The Authority shall review the benchmarks and methodology at least every three years. Where amendments are required, the Authority shall submit amended draft regulatory technical standards to the Commission.</p> <p>====</p> <p>Comment: here, with amendments above and below in Article 13, we do not need the Council addition anymore, the text can remain identical to proposal. It will be clear from Article 13 that selection is based on residual risk qualification, but the transitional clause will allow the first selection to be based on inherent risk. The methodology will have benchmarks for classifying both (again, this is not</p> |



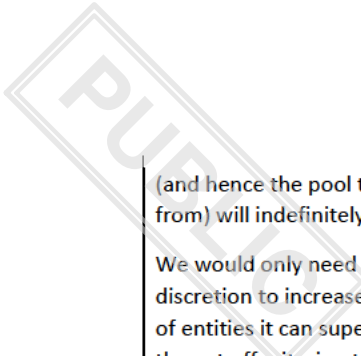
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|               |   |  |  | making RTS more complex, that's reflection of reality even if we have added residual risk).  |
| Article 13    |   |  |  |  |
| 248           | Article 13<br>The process of listing selected obliged entities                | Article 13<br>The process of listing selected obliged entities   | Article 13<br>The process of listing selected obliged entities   | Article 13<br>The process of listing selected obliged entities<br><br>Text Origin: Commission Proposal   |
| Article 13(1) |   |  |  |  |
| 249           | 1. The following obliged entities shall qualify as a selected obliged entity: | 1. The <del>following obliged entities</del> <u>credit institutions, financial institutions and groups thereof whose risk profile has been classified as high pursuant to article 12</u> shall qualify as a selected obliged entity. | <del>1. The following</del> <u>For the first selection process, the 40</u> obliged entities <u>assessed pursuant to Article 12 that have the highest residual risk profile in at least two Member States</u> shall qualify as a selected obliged entity. | 1. The <del>following obliged entities</del> <u>credit institutions, financial institutions and groups thereof whose residual risk profile has been classified as high pursuant to Article 12</u> shall qualify as <del>a</del> selected obliged entities. |



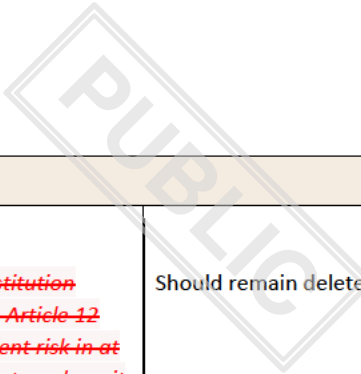
|      |  |  |  |  |
|------|--|--|--|--|
|      |  |  |  | <p>Comment: we suggest to follow Council drafting, with slight modification explicitly referring to residual risk. We do not need the reference to the first selection process due to the proposed transitional</p>  |
|      |  |  |  |  |
| 249a |  |  | <p><u>As of the second selection process, the number of obliged entities that qualify as a selected obliged entity may be increased by up to 10% in every successive selection process, up to a maximum of 60 selected obliged entities. The Commission shall, to that end, provide an impact assessment taking into account the budgetary impact of such an increase.</u></p> | <p>Our alternative suggestion based on this amendment comes below, after the paragraph on 1 entity per MS.</p> <p>Just like in the line above, we will not need a reference to the second selection process, because for all the exceptions applicable in the first selection, we will have a transitional provision (see line 222).</p> <p>Additionally, any budgetary impact assessment by the COM is impossible, because the impact can only be known/estimated when the entities are selected (they are not known upfront). In</p> |



|  |  |  |  |
|--|--|--|--|
|  |  |  | <p>addition, strictly speaking impact assessment will not be necessary, because as of the second selection budgetary constraints will lessen significantly, and AMLA can adapt its budgetary planning and recruitment (unless the number of entities doubles).</p> <p>Please note the absence of cap as of second selection in Council version – the implications are discussed above in the paper.</p> <p><b>We agree with the idea of the flexible cap suggested by the EP,</b> but have to make sure it does not impose undue constraints.</p> <p>We can also imagine a situation where the ceiling is not needed - for example, it would not make much sense to increase the number of SOEs by adding those whose risk profile is <i>lower</i> than high, just because it turned out that exactly 39 have high risk in the 4<sup>th</sup> round of assessment. We can't automatically assume that the number of high-risk entities</p> |
|--|--|--|--|



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|                          |   |   |   | <p>(and hence the pool to choose from) will indefinitely grow.</p> <p>We would only need AMLA's discretion to increase the number of entities it can supervise and the cut off criterion to execute such increase in cases where the pool of high-risk entities is larger than in the previous period and the increase is more than it has a capacity to handle.</p> |
| Article 13(1), point (a) |   |   |   |  |
| 250                      | <p>(a) each credit institution assessed pursuant to Article 12 that has a high inherent risk profile in at least four Member States and that has been under supervisory or other public investigation for material breaches of the acts referred to in Article 1(2) in at least one of those Member States in the previous three years;</p> | <p><del>(a) each credit institution assessed pursuant to Article 12 that has a high inherent risk profile in at least four Member States and that has been under supervisory or other public investigation for material breaches of the acts referred to in Article 1(2) in at least one of those Member States in the previous three years;</del><br/><del>deleted</del></p> | <p><del>(a) each credit institution assessed pursuant to Article 12 that has a high inherent risk profile in at least four Member States and that has been under supervisory or other public investigation for material breaches of the acts referred to in Article 1(2) in at least one of those Member States in the previous three years;</del><br/><del>deleted</del></p> | <p>Should remain deleted indeed</p>  |



| Article 13(1), point (b) |  |  |  |   |
|--------------------------|--|--|--|---|
| 251                      | (b) each financial institution assessed pursuant to Article 12 that has a high inherent risk in at least one Member States where it is established or operates via a subsidiary or a branch, and at least five other Member States where it operates via direct provision of services or via a network of representative agents. | <del>(b) each financial institution assessed pursuant to Article 12 that has a high inherent risk in at least one Member States where it is established or operates via a subsidiary or a branch, and at least five other Member States where it operates via direct provision of services or via a network of representative agents.</del> <u>deleted</u> | <del>(b) each financial institution assessed pursuant to Article 12 that has a high inherent risk in at least one Member States where it is established or operates via a subsidiary or a branch, and at least five other Member States where it operates via direct provision of services or via a network of representative agents.</del> <u>deleted</u> | Should remain deleted indeed  |
| 251a                     |  |  | <u>-1a. Where in a Member State no established, registered or authorised obliged entity or group thereof qualifies as a selected obliged entity under paragraph 1, the obliged entity or group thereof that has the highest residual risk profile pursuant to the methodology referred to in Article 12(3) shall</u>                                       | We would suggest to start with a flexible cap para which should only concern the “regularly” selected groups and entities. Otherwise the cap (and scaling back the number to get to the cap) would interfere with 1 entity per MS (which is what we understand the co-legislators do not want). |

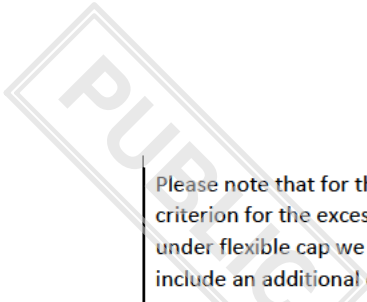


be designated as a selected obliged entity.

1a. Where more than 40 selected obliged entities are identified pursuant to paragraph 1, the Authority may, in consultation with the supervisory authorities, agree on limiting the selection to a specific different number of entities or groups [that shall not exceed 60.]

In deciding on the number of selected obliged entities, the Authority shall take into account its own resources capacity to allocate or additionally hire the necessary number of supervisory and support staff and shall ensure that the increase in the financial and human resources is feasible.

Pursuant to the decision of the maximum number, the selected obliged entities shall be the the obliged entities and groups among those qualifying under paragraph 1, which are operating in the highest number of Member States either through establishments or freedom to provide services.



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|      |  |   | <p>Please note that for the cut-off criterion for the excess entities under flexible cap we do not include an additional criterion of cross-border transactions. It's precisely because this cap is not a strict number but is flexible - when setting the number, AMLA can take into account can make sure it doesn't need the additional transaction ratio criterion;</p> <p>Para 1b with 1 entity per MS comes next and is therefore excluded from application of cut-off criterion to make sure that AMLA doesn't cut back on those that have been selected in MS where there was no qualifying entity</p> |
|      |  |   |  |
| 251b |  | <p><u>Where several obliged entities or groups thereof have a high residual risk profile, the selected obliged entities shall be the ones operating in the highest number</u></p> | <p>Next to flexible cap we can indeed have the 1 entity per MS rule. This has to be combined with line 253c, Council version of the 1 entity per MS. A modification is needed to ensure</p>  |

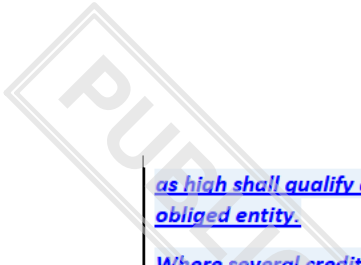
of Member States through either establishments or under the freedom to provide services. Where several obliged entities or groups thereof operate in the same number of Member States, the selected obliged entities shall be the ones with the highest ratio of transaction volume with third countries to total transaction volume as measured over the last financial reporting year.

that only high risk subsidiaries count as qualifying entity, and otherwise the 1 entity per MS applies.

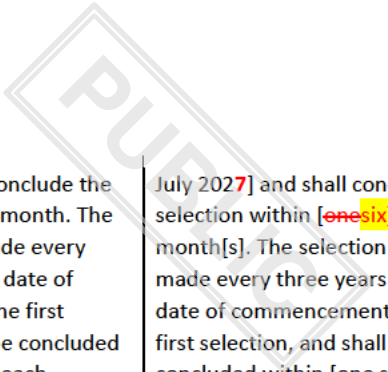
This para would then be simply disapplied by the transitional provision in the first selection process.

1b. Where in a Member state no credit, financial institution or a group of credit and/or financial institutions which is established, authorised or registered, or has a subsidiary therein whose risk profile is classified as high, qualifies as a selected obliged entity pursuant to paragraph 1, an additional selection process shall be carried out by the Authority in that Member State, based on methodology referred to in Article 12(5).

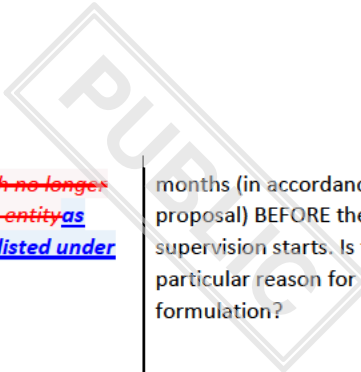
Following the selection process, the credit or financial institution or a group of credit and/or financial institutions established or registered in this Member State whose risk profile qualifies



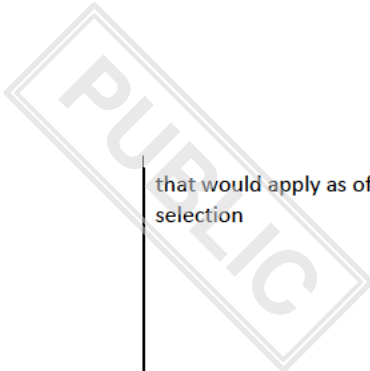
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|               |  |  |  | <p><u>as high shall qualify as a selected obliged entity.</u></p> <p><u>Where several credit or financial institutions or groups thereof in the Member State in question have a high risk profile, then the selected obliged entity shall be the one operating in the highest number of Member States either through establishments or under the freedom to provide services. If several credit or financial institutions or groups thereof operate in the same number of Member States, the entity with the highest ratio of transaction volume with third countries to total transaction volume as measured over the last financial reporting year shall qualify as a selected obliged entity.</u></p> |
| Article 13(2) |  |  |  |  |
| 252           | 2. The Authority shall commence the first selection process on 1 | 2. The Authority shall commence the first selection process on 1 | 2. The Authority shall commence the first selection process on 1 | 2. The Authority shall commence the first selection process [by 1  |



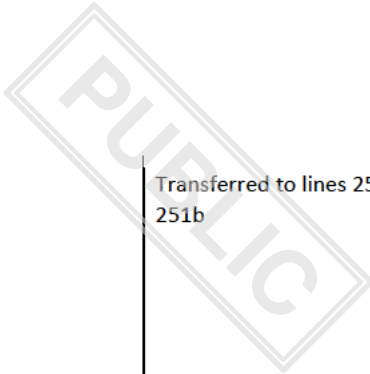
|               |  |   |  |   |
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|               | <p>July 2025 and shall conclude the selection within one month. The selection shall be made every three years after the date of commencement of the first selection, and shall be concluded within one month in each selection period. The list of the selected obliged entities shall be published by the Authority without undue delay upon completion of selection process. The Authority shall commence the direct supervision of the selected obliged entities five months after publication of the list.</p> | <p>July 2025 and shall conclude the selection within one month. The selection shall be made every three years after the date of commencement of the first selection, and shall be concluded within one month in each selection <del>period</del><i>process</i>. The list of the selected obliged entities shall be published by the Authority without undue delay upon completion of selection process. The Authority shall commence the direct supervision of the selected obliged entities five months after publication of the list.</p> | <p>July 2025 and shall conclude the selection within one month. The selection shall be made every three years after the date of commencement of the first selection, and shall be concluded within one month in each selection period. The list of the selected obliged entities shall be published by the Authority without undue delay upon completion of selection process. The Authority shall commence the direct supervision of the selected obliged entities five months after publication of the list.</p> | <p>July 2027] and shall conclude the selection within [<del>one</del>six] month[s]. The selection shall be made every three years after the date of commencement of the first selection, and shall be concluded within [one six?] month in each selection <del>period</del><i>process</i>. The list of the selected obliged entities shall be published by the Authority without undue delay upon completion of selection process. The Authority shall commence the direct supervision of the selected obliged entities [<del>five</del> six] months after publication of the list.</p> |
| Article 13(3) |  |   |  |   |
| 253           | <p>3. A selected obliged entity shall remain subject to direct supervision by the Authority until the Authority commences the direct supervision of selected obliged entities based on a list established for the subsequent</p>   | <p>3. A selected obliged entity shall remain subject to direct supervision by the Authority until the Authority commences the direct supervision of selected obliged entities based on a list established for the subsequent</p>  | <p>3. A selected obliged entity shall remain subject to direct supervision by the Authority <del>until the Authority commences the direct supervision of selected obliged entities based on a list established for the subsequent</del></p>  | <p>Here we prefer the COM proposal copied by Council – the EP formulation is unclear, because the listing is just a publication of the outcome of the process. So no OE ever gets “de-listed”, it just may be included in the next list or not. The next list will also come 5</p>  |



|               |   |   |   |  |
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|               | selection round which no longer includes that obliged entity. | selection round which no longer includes that obliged entity.   | <del>selection round which no longer includes that obliged entity</del> <u>as long as the entity is listed under paragraph 2.</u> | months (in accordance with COM proposal) BEFORE the actual supervision starts. Is there any particular reason for EP formulation?<br><br>3. A selected obliged entity shall remain subject to direct supervision by the Authority until the Authority commences the direct supervision of selected obliged entities based on a list established for the subsequent selection round which no longer includes that obliged entity. |
| Article 13(4) |   |   |   |  |
| 253a          |   | <u>4. For the first selection process, in case more than 40 obliged entities would be selected pursuant to paragraph 1, the Authority shall carry out the tasks listed in article 5(2) in respect of the 40 obliged entities or groups operating in the</u> |   | See line 222, we propose to transfer this and the next line into a transitional provision to be put at the end of the Regulation.<br><br>This Article will only talk about the "soft cap" as inspired by EP  |



|                                   |   |  |   |
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|                                   | <u>highest number of Member States either through establishments or active free provision of services.</u>  |  | that would apply as of second selection |
| Article 13(4), first subparagraph |   |  |   |
| 253b                              | <u>3b. In the case that the criterion referred to in the first subparagraph yields more than 40 obliged entities or groups, the Authority shall select, from the obliged entities or groups that would be selected in accordance with paragraph 1 and that actively operate in the smallest number of Member States, those which have the highest ratio of the volume of transactions with third countries to the total volume of transactions measured in the last financial year.</u> |  | See comment above and line 222          |
| Article 13(5)                     |   |  |   |



Transferred to lines 251a and 251b

253c

5. As of the second selection process, where in a Member state no credit, financial institution or a group of credit and/or financial institutions which is established, authorised or registered, or has a subsidiary therein qualifies as a selected obliged entity pursuant to paragraph 1, the credit or financial institution or a group of credit and/or financial institutions established or registered in this Member State whose risk profile qualifies as high pursuant to the methodology referred to in article 12 (5) shall qualify as a selected obliged entity. If several credit or financial institutions have a high risk profile, then the selected obliged entity shall be the one operating in the highest number of Member States through either free establishment or active free provision of services. If several credit or financial institutions

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operate in the same number of Member States, the entity with the highest ratio of transaction volume with third countries to total transaction volume as measured over the last financial reporting year shall qualify as a selected obliged entity.