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LIMITE

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WORKING DOCUMENT

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

Subject:	AML Rulebook: ddl 21.10.2022 - Tables (3) with written comments from MS on first CZ PCY compromise proposals on AMLR (relating to documents WK 13164/22 and WK 13165/22) - Replies from 22 MS: HR CY SK SI HU NL IT EE AT BE SE EL FR ES FI LV IE DK BG DE LT MT

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Following the feedback provided by delegations, the Czech Presidency is hereby submitting a first 4CT with amendments to the AMLR proposal.

The changes introduced by FR PRES are presented in black **bold (additions)** and black strikethrough (~~deletions~~). The changes introduced by CZ PRES are presented in **bold red (additions)** and black strikethrough (~~deletions~~). Explanations for these changes are included in the column "PCY Comment". MS views regarding these changes are most welcomed in the column "MS comment/drafting".

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
2021/0239 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (Text with EEA relevance)	2021/0239 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (Text with EEA relevance)		IT: (Comments): As a general consideration, we believe that the current version of the Regulation still requires some further discussion and fine-tuning. We should bear in mind that the AMLR represents the technical core of the AML package and that, given its directly applicable nature, national legislators will in future not be in the position to overcome interpretational doubts or application difficulties at domestic level. Therefore, we believe it is worth making any possible effort at this stage to draft AMLR provisions in the clearest and the most accurate possible, without acting hastily. In particular, we draw the attention on the provisions related to outsourcing, internal control and

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			group-wide requirements, SDD and BO transparency measures. Moreover, we understand that to achieve a fully harmonised AML regime, it is essential that technical aspects be defined in L2 acts, following experts' discussions in the context of AMLA. Nonetheless, we caution against the risk to burden the AMLA with an excessive number of regulatory mandates, since this might be too challenging and eventually result in the need to postpone the entry into force of the Regulation. For this reason, we suggest re-assess the actual need to maintain all mandates foreseen in the current version of the AMLR. In addition, we believe it would be more prudent to leave the current EBA GLs and RTS in place as long as the AMLA will exercise its mandates. BE: (Comments): general remark :

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			the recitals should be checked in order or make sure they do all reflect the numerous changes introduced to the corresponding articles so there is full convergence and no space left for different interpretations.
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,		
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,		

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Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,		
After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments		
Having regard to the opinion of the European Central Bank ¹ ,	Having regard to the opinion of the European Central Bank ² ,		
Having regard to the opinion of the European Economic and Social Committee ³ ,	Having regard to the opinion of the European Economic and Social Committee ⁴ ,		
Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,		

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C , , p. .

⁴ OJ C , , p. .

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Whereas:	Whereas:		
(1) Directive (EU) 2015/849 of the European Parliament and of the Council ⁵ constitutes the main legal instrument for the prevention of the use of the Union financial system for the purposes of money laundering and terrorist financing. That Directive sets out a comprehensive legal framework, which Directive (EU) 2018/843 of the European Parliament and the	(1) Directive (EU) 2015/849 of the European Parliament and of the Council ⁷ constitutes the main legal instrument for the prevention of the use of the Union financial system for the purposes of money laundering and terrorist financing. That Directive sets out a comprehensive legal framework, which Directive (EU) 2018/843 of the European Parliament and the		

⁵ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

⁷ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Council ⁶ further strengthened by addressing emerging risks and increasing transparency of beneficial ownership. Notwithstanding its achievements, experience has shown that further improvements should be introduced to adequately mitigate risks and to effectively detect criminal attempts to misuse the Union financial system for criminal purposes.	Council ⁸ further strengthened by addressing emerging risks and increasing transparency of beneficial ownership. Notwithstanding its achievements, experience has shown that further improvements should be introduced to adequately mitigate risks and to effectively detect criminal attempts to misuse the Union financial system for criminal purposes.		
(2) The main challenge identified in respect to the application of the provisions of Directive (EU) 2015/849 laying	(2) The main challenge identified in respect to the application of the provisions of Directive (EU) 2015/849 laying	The proposed amendment's aim is to allow Member States to maintain more stringent AML measures than those provided for in the common	ES: (Comments): Unfortunately, this recital is not reflected in the articles of the proposal. Attached to these tables is

⁶ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ L 156, 19.6.2018, p. 43).

⁸ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ L 156, 19.6.2018, p. 43).

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down obligations for private sector actors, the so-called obliged entities, is the lack of direct applicability of those rules and a fragmentation of the approach along national lines. Whereas those rules have existed and evolved over three decades, they are still implemented in a manner not fully consistent with the requirements of an integrated internal market. Therefore, it is necessary that rules on matters currently covered in Directive (EU) 2015/849 which may be directly applicable by the obliged entities concerned are addressed in a new Regulation in order to achieve the desired uniformity of application.	down obligations for private sector actors, the so-called obliged entities, is the lack of direct applicability of those rules and a fragmentation of the approach along national lines. Whereas those rules have existed and evolved over three decades, they are still implemented in a manner not fully consistent with the requirements of an integrated internal market. Therefore, it is necessary that rules on matters currently covered in Directive (EU) 2015/849 which may be directly applicable by the obliged entities concerned are addressed in a new Regulation in order to achieve the desired uniformity of application-, while it	framework, as far as its effectiveness have been proven over time in their system. This change reflects the Council conclusions Nov.2020 (1), that the Regulation itself should clearly state this possibility for Member States.	a note with Spain's specific position on the agreement reached by the Council in November 2020. FI: (Comments): We support the possibility to have more strict rules nationally and therefore support the clarifying text. IE: (Comments): Agreed

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	should be ensured that the high standard achieved by Member States in their national transpositions is maintained overall.		
(3) This new instrument is part of a comprehensive package aiming at strengthening the Union's AML/CFT framework. Together, this instrument, Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> , Regulation <i>[please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final]</i> and Regulation <i>[please insert reference – proposal for</i>	(3) This new instrument is part of a comprehensive package aiming at strengthening the Union's anti-money laundering and countering the financing of terrorism (AML/CFT) framework. Together, this instrument, Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> , Regulation <i>[please insert reference – proposal for a recast of Regulation (EU) 2015/847 -</i>	The Presidency shares the opinion of MS initiating this amendment that the abbreviation “AML/CFT” which is used throughout the AMLR should be define in the first place where it is used. Otherwise, an ignorant reader will not know its meaning until Article 9.	ES: (Comments): ok FI: (Comments): We support the clarification. IE: (Comments): Agreed

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<i>establishment of an Anti-Money Laundering Authority - COM/2021/421 final]</i> will form the legal framework governing the AML/CFT requirements to be met by obliged entities and underpinning the Union's AML/CFT institutional framework, including the establishment of an Authority for anti-money laundering and countering the financing of terrorism ('AMLA').	<i>COM/2021/422 final]</i> and Regulation <i>[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]</i> will form the legal framework governing the AML/CFT requirements to be met by obliged entities and underpinning the Union's AML/CFT institutional framework, including the establishment of an Authority for anti-money laundering and countering the financing of terrorism ('AMLA').		
(4) Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted at Union	(4) Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted at Union		

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level, without taking into account international coordination and cooperation, would have very limited effect. The measures adopted by the Union in that field should therefore be compatible with, and at least as stringent as actions undertaken at international level. Union action should continue to take particular account of the Financial Action Task Force (FATF) Recommendations and instruments of other international bodies active in the fight against money laundering and terrorist financing. With a view to reinforcing the efficacy of the fight against money laundering and terrorist financing, the relevant	level, without taking into account international coordination and cooperation, would have very limited effect. The measures adopted by the Union in that field should therefore be compatible with, and at least as stringent as actions undertaken at international level. Union action should continue to take particular account of the Financial Action Task Force (FATF) Recommendations and instruments of other international bodies active in the fight against money laundering and terrorist financing. With a view to reinforcing the efficacy of the fight against money laundering and terrorist financing, the relevant		

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Union legal acts should, where appropriate, be aligned with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by the FATF in February 2012 (the ‘revised FATF Recommendations’) and the subsequent amendments to such standards.	Union legal acts should, where appropriate, be aligned with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by the FATF in February 2012 (the ‘revised FATF Recommendations’) and the subsequent amendments to such standards.		
(5) Since the adoption of Directive (EU) 2015/849, recent developments in the Union’s criminal law framework have contributed to strengthening the prevention and fight against money laundering, its predicate offences and terrorist financing. Directive	(5) Since the adoption of Directive (EU) 2015/849, recent developments in the Union’s criminal law framework have contributed to strengthening the prevention and fight against money laundering, its predicate offences and terrorist financing. Directive		

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(EU) 2018/1673 of the European Parliament and of the Council ⁹ has led to a common understanding of the money laundering crime and its predicate offences. Directive (EU) 2017/1371 of the European Parliament and of the Council ¹⁰ defined financial crimes affecting the Union's financial interest, which should also be considered predicate offences to money laundering. Directive (EU) 2017/541 of the European	(EU) 2018/1673 of the European Parliament and of the Council ¹² has led to a common understanding of the money laundering crime and its predicate offences. Directive (EU) 2017/1371 of the European Parliament and of the Council ¹³ defined financial crimes affecting the Union's financial interest, which should also be considered predicate offences to money laundering. Directive (EU) 2017/541 of the European		

⁹ Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018, p. 22).

¹⁰ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

¹² Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018, p. 22).

¹³ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

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Parliament and of the Council ¹¹ has achieved a common understanding of the crime of terrorist financing. As those concepts are now clarified in Union criminal law, it is no longer needed for the Union's AML/CFT rules to define money laundering, its predicate offences or terrorist financing. Instead, the Union's AML/CFT framework should be fully coherent with the Union's criminal law framework.	Parliament and of the Council ¹⁴ has achieved a common understanding of the crime of terrorist financing. As those concepts are now clarified in Union criminal law, it is no longer needed for the Union's AML/CFT rules to define money laundering, its predicate offences or terrorist financing. Instead, the Union's AML/CFT framework should be fully coherent with the Union's criminal law framework.		
(6) Technology keeps evolving, offering opportunities to the private sector to develop new products and	(6) Technology keeps evolving, offering opportunities to the private sector to develop new products and		

¹¹ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

¹⁴ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

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systems to exchange funds or value. While this is a positive phenomenon, it may generate new money laundering and terrorist financing risks, as criminals continuously manage to find ways to exploit vulnerabilities in order to hide and move illicit funds around the world. Crypto-assets service providers and crowdfunding platforms are exposed to the misuse of new channels for the movement of illicit money and are well placed to detect such movements and mitigate risks. The scope of Union legislation should therefore be expanded to cover these entities, in line with the recent developments	systems to exchange funds or value. While this is a positive phenomenon, it may generate new money laundering and terrorist financing risks, as criminals continuously manage to find ways to exploit vulnerabilities in order to hide and move illicit funds around the world. Crypto-assets service providers and crowdfunding platforms are exposed to the misuse of new channels for the movement of illicit money and are well placed to detect such movements and mitigate risks. The scope of Union legislation should therefore be expanded to cover these entities, in line with the recent developments		

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in FATF standards in relation to crypto-assets.	in FATF standards in relation to crypto-assets.		
(7) The institutions and persons covered by this Regulation play a crucial role as gatekeepers of the Union's financial system and should therefore take all necessary measures necessary to implement the requirements of this Regulation with a view to preventing criminals from laundering the proceeds of their illegal activities or from financing terrorist activities. Measures should also be put in the place to mitigate any risk of non-implementation or evasion of targeted financial sanctions.	(7) The institutions and persons covered by this Regulation play a crucial role as gatekeepers of the Union's financial system and should therefore take all necessary measures necessary to implement the requirements of this Regulation with a view to preventing criminals from laundering the proceeds of their illegal activities or from financing terrorist activities. Measures should also be put in the place to mitigate any risk of non-implementation or evasion of targeted financial sanctions.		DE: (Comments): We refer to our comment on Art. 7 (new: 8) para.1 (b). Reference to TFS-obligations is problematic as Art. 7 (new: 8) para.1 (b) could only refer to risk mitigation obligations regarding the EU sanctions regimes for Iran and North Korea and not to compliance with TFS in general. Targeted financial sanctions according to Council Decisions adopted on the basis of Article 29 of the Treaty on the European Union (TEU) and Council Regulations adopted on the basis of Article 215 of the Treaty on the Functioning of the European Union (TFEU) are a matter of Common Foreign and Security Policy and should not be subject to the AML/CF regulation. On the (legal)

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			basis of art. 114 TFEU, we see at most little room for organizational matters in respect of proliferation financing-related targeted financial sanctions based on the updated FATF framework. In order to avoid an undermining of European law and of existing practices on targeted financial sanctions enforcement and in order to ensure a more coherent approach on targeted financial enforcement in the member states, GER proposes to discuss the best approach for an effective sanctions enforcement framework in the council working group RELEX. (7) The institutions and persons covered by this Regulation play a crucial role as gatekeepers of the Union's financial system and should therefore take all necessary measures necessary to implement the requirements of this Regulation with a view to preventing criminals from laundering the proceeds of their illegal activities or from financing terrorist activities.

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			Measures should also be put in the place to mitigate any risk of non-implementation or evasion of PF -targeted financial sanctions.
(8) Financial transactions can also take place within the same group as way of managing group finances. However, such transactions are not undertaken vis-à-vis customers and do not require the application of AML/CFT measures. In order to ensure legal certainty, it is necessary to recognise that this Regulation does not apply to financial activities or other financial services which are provided by members of a group to other members of that group.	(8) Financial transactions can also take place within the same group as way of managing group finances. However, such transactions are not undertaken vis-à-vis customers and do not require the application of AML/CFT measures. In order to ensure legal certainty, it is necessary to recognise that this Regulation does not apply to financial activities or other financial services which are provided by members of a group to other members of that group.		NL: (Comments): This needs to be reflected in the text also and not only in legally non-binding recitals. BE: (Comments): NBB: Recital 8 provides that “<i>it is necessary to recognise that this Regulation does not apply to financial activities or other financial services which are provided by members of a group to other members of that group</i>”. If it is indeed the intention, this should be clearly set out in article 5 relating to “Exemptions for certain financial activities”.

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(9) Independent legal professionals should be subject to this Regulation when participating in financial or corporate transactions, including when providing tax advice, where there is the risk of the services provided by those legal professionals being misused for the purpose of laundering the proceeds of criminal activity or for the purpose of terrorist financing. There should, however, be exemptions from any obligation to report information obtained before, during or after judicial proceedings, or in the course of ascertaining the legal position of a client, which should be covered by the legal privilege.	(9) Independent legal professionals should be subject to this Regulation when participating in financial or corporate transactions, including when providing tax advice, where there is the risk of the services provided by those legal professionals being misused for the purpose of laundering the proceeds of criminal activity or for the purpose of terrorist financing. There should, however, be exemptions from any obligation to report information obtained before, during or after judicial proceedings, or in the course of ascertaining the legal position of a client, which should be covered by the legal privilege.		BE: (Comments): In Art 3 AMLR defining the scope of obliged entities includes now in point (a) and (b) lawyers beside independent legal professions. So it is clear that a lawyer who provides solely tax advice (= art 3 (a) and not the other activities under (b) of assisting or representing his customer in financial or RE transactions) as his principal activity will also be covered under Art. 3 (a); As recital (9) states : There should, however, be exemptions from any obligation to report information obtained before, during or after judicial proceedings, or in the course of ascertaining the legal position of a client, which should be covered by the legal

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Therefore, legal advice should remain subject to the obligation of professional secrecy, except where the legal professional is taking part in money laundering or terrorist financing, the legal advice is provided for the purposes of money laundering or terrorist financing, or where the legal professional knows that the client is seeking legal advice for the purposes of money laundering or terrorist financing.	Therefore, legal advice should remain subject to the obligation of professional secrecy, except where the legal professional is taking part in money laundering or terrorist financing, the legal advice is provided for the purposes of money laundering or terrorist financing, or where the legal professional knows that the client is seeking legal advice for the purposes of money laundering or terrorist financing.		privilege. Therefore, legal advice should remain subject to the obligation of professional secrecy, ... Clarification tax advice equals to legal advice/legal privilege. A lawyer covered under Art 3 a) will then solely render legal advice in tax matters for which activities he will be covered but under no obligation to report because he is in the course of ascertaining the legal position of his client. FI: (Comments): The definition regarding legal professionals is very broad and can lead to different interpretations. It can be difficult to ascertain in which situations legal privilege should be applied. It is important to take into consideration legal certainty. The provisions on legal privilege are meant to protect the client and are part of the rights

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			protected by the European Human Rights Convention Articles 6 and article 8. If this would be the direction that we want to take, other legislation regarding legal professionals should be strengthened, to ensure their independence and the coverage of legal privilege. DE: (Comments): Please see our comment on Art. 51 AMLR.
(10) In order to ensure respect for the rights guaranteed by the Charter of Fundamental Rights of the European Union (the ‘Charter’), in the case of auditors, external accountants and tax advisors, who, in some Member States, are entitled to defend or represent a client in the context of judicial proceedings or	(10) In order to ensure respect for the rights guaranteed by the Charter of Fundamental Rights of the European Union (the ‘Charter’), in the case of auditors, external accountants and tax advisors, who, in some Member States, are entitled to defend or represent a client in the context of judicial proceedings or		FI: (Comments): This point is also not sufficiently clear to ensure legal certainty.

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to ascertain a client's legal position, the information they obtain in the performance of those tasks should not be subject to reporting obligations.	to ascertain a client's legal position, the information they obtain in the performance of those tasks should not be subject to reporting obligations.		
(11) Directive (EU) 2018/843 was the first legal instrument to address the risks of money laundering and terrorist financing posed by crypto-assets in the Union. It extended the scope of the AML/CFT framework to two types of crypto-assets services providers: providers engaged in exchange services between virtual currencies and fiat currencies and custodian wallet providers. Due to rapid technological developments and the	(11) Directive (EU) 2018/843 was the first legal instrument to address the risks of money laundering and terrorist financing posed by crypto-assets in the Union. It extended the scope of the AML/CFT framework to two types of crypto-assets services providers: providers engaged in exchange services between virtual currencies and fiat currencies and custodian wallet providers. Due to rapid technological developments and the		

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advancement in FATF standards, it is necessary to review this approach. A first step to complete and update the Union legal framework has been achieved with Regulation <i>[please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final]</i>, which set requirements for crypto-asset service providers wishing to apply for an authorisation to provide their services in the single market. It also introduced a definition of crypto-assets and crypto-assets services providers encompassing a broader range of activities. Crypto-asset service	advancement in FATF standards, it is necessary to review this approach. A first step to complete and update the Union legal framework has been achieved with Regulation <i>[please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final]</i>, which set requirements for crypto-asset service providers wishing to apply for an authorisation to provide their services in the single market. It also introduced a definition of crypto-assets and crypto-assets services providers encompassing a broader range of activities. Crypto-asset service		

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providers covered by Regulation <i>[please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final]</i> should also be covered by this Regulation, to mitigate any risk of misuse of crypto-assets for money laundering or terrorist financing purposes.	providers covered by Regulation <i>[please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final]</i> should also be covered by this Regulation, to mitigate any risk of misuse of crypto-assets for money laundering or terrorist financing purposes.		
(12) Crowdfunding platforms' vulnerabilities to money laundering and terrorist financing risks are horizontal and affect the internal market as a whole. To date, diverging approaches have emerged across Member States as to the management of those risks.	(12) ~~Crowdfunding platforms~~ Crowdfunding service providers' vulnerabilities to money laundering and terrorist financing risks are horizontal and affect the internal market as a whole. To date, diverging approaches have emerged across Member States as to the	The aim of proposed changes is to bring the recital to line with the wording of Art.3 (3) h – obliged entities and Art.2 (14b) -definitions Art.3 (3) h – obliged entities.	NL: (Comments): Please note that both the term "crowdfunding service provider" and "crowdfunding platform" are defined in the crowdfunding regulation. Therefore, it would be better to replace "crowdfunding service providers" by "crowdfunding service providers and [other] third-party financing intermediaries". Also, in the last sentence of this recital it is mentioned that licensed crowdfunding platforms will not be

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Regulation (EU) 2020/1503 of the European Parliament and of the Council ¹⁵ harmonises the regulatory approach for business investment and lending-based crowdfunding platforms across the Union and ensures that adequate and coherent safeguards are in place to deal with potential money laundering and terrorist financing risks. Among those, there are requirements for the management of funds and payments in relation to all the financial transactions executed on those platforms. Crowdfunding service providers	management of those risks. Regulation (EU) 2020/1503 of the European Parliament and of the Council ¹⁶ harmonises the regulatory approach for business investment and lending-based crowdfunding platforms crowdfunding service providers across the Union and ensures that adequate and coherent safeguards are in place to deal with potential money laundering and terrorist financing risks. Among those, there are requirements for the management of funds and payments in relation to all the		subjected to AML/CFT legislation. This seems to not be in line with article 3(3)(h) AMLR IT: (Comments): The recital seems not consistent with the text of regulation, in this updated version (which includes CFSPs regulated under Regulation EU 2020/1503 amongst obliged entities). ES: (Comments): ok IE: (Comments): Not agreed. This Reg should only apply to CFSPs under Reg 2020/1503

¹⁵ Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347, 20.10.2020, p. 1).

¹⁶ Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347, 20.10.2020, p. 1).

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must either seek a license or partner with a payment service provider or a credit institution for the execution of such transactions. The Regulation also sets out safeguards in the authorisation procedure, in the assessment of good repute of management and through due diligence procedures for project owners. The Commission is required to assess by 10 November 2023 in its report on that Regulation whether further safeguards may be necessary. It is therefore justified not to subject crowdfunding platforms licensed under Regulation (EU) 2020/1503 to Union AML/CFT legislation.	financial transactions executed on those platforms. Crowdfunding service providers must either seek a license or partner with a payment service provider or a credit institution for the execution of such transactions. The Regulation also sets out safeguards in the authorisation procedure, in the assessment of good repute of management and through due diligence procedures for project owners. The Commission is required to assess by 10 November 2023 in its report on that Regulation whether further safeguards may be necessary. It is therefore justified not to subject crowdfunding platforms licensed		

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	under Regulation (EU) 2020/1503 to Union AML/CFT legislation.		
(13) Crowdfunding platforms that are not licensed under Regulation (EU) 2020/1503 are currently left either unregulated or to diverging regulatory approaches, including in relation to rules and procedures to tackle anti-money laundering and terrorist financing risks. To bring consistency and ensure that there are no uncontrolled risks in that environment, it is necessary that all crowdfunding platforms that are not licensed under Regulation (EU) 2020/1503 and thus are not subject to its safeguards are subject to	(13) ~~Crowdfunding platforms~~ Crowdfunding service providers that are not licensed under Regulation (EU) 2020/1503 are currently left either unregulated or to diverging regulatory approaches, including in relation to rules and procedures to tackle anti-money laundering and terrorist financing risks. To bring consistency and ensure that there are no uncontrolled risks in that environment, it is necessary that all ~~crowdfunding platforms~~ crowdfunding service providers that are not licensed under	The aim of proposed changes is to bring the recital to line with the wording of Art.3 (3) h – obliged entities and Art.2 (14b) -definitions Art.3 (3) h – obliged entities.	NL: (Comments): (13) ~~Crowdfunding platforms~~ Crowdfunding service providers Third-party financing intermediaries that are not licensed under Regulation (EU) 2020/1503 are currently left either unregulated or to diverging regulatory approaches, including in relation to rules and procedures to tackle anti-money laundering and terrorist financing risks. To bring consistency and ensure that there are no uncontrolled risks in that environment, it is necessary that all ~~crowdfunding platforms~~ crowdfunding service providers Third-party financing intermediaries that are not licensed under Regulation (EU) 2020/1503 and thus are not

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Union AML/CFT rules in order to mitigate money laundering and terrorist financing risks.	Regulation (EU) 2020/1503 and thus are not subject to its safeguards are subject to Union AML/CFT rules in order to mitigate money laundering and terrorist financing risks.		subject to its safeguards are subject to Union AML/CFT rules in order to mitigate money laundering and terrorist financing risks ES: (Comments): ok IE: (Comments): Not agreed. This Reg should only apply to CFSPs under Reg 2020/1503
	(13a) Third-party financing intermediaries, which operate a digital platform in order to match or facilitate the matching of funders with projects owners such as association or individuals that seek funding, are exposed to money laundering and terrorist	The majority of MS did not oppose to the introduction of this new recital which purpose is to recall the ML-TF risks presented by third-party financing intermediaries, highlighted in the EBA's opinion on ML-TF risks affecting the	ES: (Comments): ok IE: (Comments): Not agreed. This Reg should only apply to CFSPs under Reg 2020/1503 LT:

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	financing risks. Those intermediaries should therefore be subject to the obligations of this Regulation, in particular to avoid the diversion of funds raised for illicit purposes by criminals. In order to meet the challenges, these obligations apply to a wide range of projects, including, inter alia, educational or cultural projects and the collection of funds to support more general causes, for example in the humanitarian field, or to organize or celebrate a family or social event.	financial sector published in March 2021; - clarify the nature of the projects concerned, including those aimed at raising funds in support of causes (e.g. in the humanitarian area) or for organising or celebrating a family or social event, in order to respond to the request for clarification from some MS.	(Comments): Definition is very broad and the scope is not clear.
(14) Directive (EU) 2015/849 set out to mitigate the money	(14) Directive (EU) 2015/849 set out to mitigate the money	This amendment reflects the scope of the AMLR laid down in Article	HU: (Comments):

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laundrying and terrorist financing risks posed by large cash payments by including persons trading in goods among obliged entities when they make or receive payments in cash above EUR 10 000, whilst allowing Member States to introduce stricter measures. Such approach has shown to be ineffective in light of the poor understanding and application of AML/CFT requirements, lack of supervision and limited number of suspicious transactions reported to the FIU. In order to adequately mitigate risks deriving from the misuse of large cash sums, a Union-wide limit to large cash transactions above EUR 10 000	laundrying and terrorist financing risks posed by large cash payments by including persons trading in goods among obliged entities when they make or receive payments in cash above EUR 10 000, whilst allowing Member States to introduce stricter measures. Such approach has shown to be ineffective in light of the poor understanding and application of AML/CFT requirements, lack of supervision and limited number of suspicious transactions reported to the FIU. In order to adequately mitigate risks deriving from the misuse of large cash sums, a Union-wide limit to large cash transactions above EUR 10 000	3(3) of the AMLR. 3(e), where only persons trading in precious metals and stones from the group of persons trading in goods are included.	The draft states that persons trading in goods no longer need to be subject to AML/CFT obligations with the exception of persons trading in precious metals and precious stones. It is proposed to mention service providers dealing in cultural goods or mediating them as well: cultural goods – like precious metals – are a narrower category within trade in goods. ES: (Comments): we do not agree to identify these subjects as obliged entities for the purposes of AML/FT only if the transactions they carry out exceed a certain threshold. According to FATF standards, there should not be any threshold at all. In addition, evidence has also shown us that activities carried out by these obliged entities below the €10m threshold haven been used not only for ML but also for TF purposes (e.g. high value cash transactions without exceeding the threshold or a high number of transactions that

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should be laid down. As a consequence, persons trading in goods should no longer be subject to AML/CFT obligations.	should be laid down. As a consequence, persons trading in goods ~~should~~ no longer ~~need to~~ be subject to AML/CFT obligations, with the exception of persons trading in precious metals and precious stones.		individually do not exceed the threshold, but together may exceed it by far). In any case, we suggest to precise that their nature as OE is linked to the performance of this activity as regular or principal business or professional activity <i>“...with the exception of persons trading in precious metals and precious stones <u>as regular or principal business or professional activity</u>”...</i> As it should not covered those who perform these operations occasionally. IE: (Comments): Agreed
(15) Some categories of traders in goods are particularly exposed to money laundering and terrorist financing risks due to the high	(15) Some categories of traders in goods are particularly exposed to money laundering and terrorist financing risks due to the high		

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value that the small, transportable goods they deal with contain. For this reason, persons dealing in precious metals and precious stones should be subject to AML/CFT requirements.	value that the small, transportable goods they deal with contain. For this reason, persons dealing in precious metals and precious stones should be subject to AML/CFT requirements.		
(16) Investment migration operators are private companies, bodies or persons acting or interacting directly with the competent authorities of the Member States on behalf of third-country nationals or providing intermediary services to third-country nationals seeking to obtain residence rights in a Member State in exchange of any kind of investments, including capital	(16) Investment migration operators are private companies, bodies or persons acting or interacting directly with the competent authorities of the Member States on behalf of third-country nationals or providing intermediary services to third-country nationals seeking to obtain residence rights in a Member State in exchange of any kind of investments, including capital		

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transfers, purchase or renting of property, investment in government bonds, investment in corporate entities, donation or endowment of an activity contributing to the public good and contributions to the state budget. Investor residence schemes present risks and vulnerabilities in relation to money laundering, corruption and tax evasion. Such risks are exacerbated by the cross-border rights associated with residence in a Member State. Therefore, it is necessary that investment migration operators are subject to AML/CFT obligations. This Regulation should not apply to investor citizenship schemes, which result in the	transfers, purchase or renting of property, investment in government bonds, investment in corporate entities, donation or endowment of an activity contributing to the public good and contributions to the state budget. Investor residence schemes present risks and vulnerabilities in relation to money laundering, corruption and tax evasion. Such risks are exacerbated by the cross-border rights associated with residence in a Member State. Therefore, it is necessary that investment migration operators are subject to AML/CFT obligations. This Regulation should not apply to investor citizenship schemes, which result in the		

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acquisition of nationality in exchange for such investments, as such schemes must be considered as undermining the fundamental status of Union citizenship and sincere cooperation among Member States.	acquisition of nationality in exchange for such investments, as such schemes must be considered as undermining the fundamental status of Union citizenship and sincere cooperation among Member States.		
(17) Consumer and mortgage creditors and intermediaries that are not credit institutions or financial institutions have not been subject to AML/CFT requirements at Union level, but have been subject to such obligations in certain Member States due to their exposure to money laundering and terrorist financing risks. Depending on their business model, such consumer and	(17) Consumer and mortgage creditors and intermediaries that are not credit institutions or financial institutions have not been subject to AML/CFT requirements at Union level, but have been subject to such obligations in certain Member States due to their exposure to money laundering and terrorist financing risks. Depending on their business model, such consumer and	The proposed change aims to bring this recital in line with the list of obliged entities in Art. 3. The amendment aims at distinguishing situations where a credit or financial institution is involved in the process of granting consumer and mortgage loan and where it is not.	AT: (Comments): We were wondering whether a situation without an obliged entity can occurs, since the granting of loans requires licensing as a credit institution. ES: (Comments): ok IE: (Comments): Agreed

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mortgage creditors and intermediaries may be exposed to significant money laundering and terrorist financing risks. It is important to ensure that entities carrying out similar activities that are exposed to such risks are covered by AML/CFT requirements, regardless of whether they qualify as credit institutions or financial institutions. Therefore, it is appropriate to include consumer and mortgage creditors and intermediaries that are not credit institutions or financial institutions but that are, as a result of their activities, exposed to money laundering and terrorist financing risks.	mortgage creditors and intermediaries may be exposed to significant money laundering and terrorist financing risks. It is important to ensure that entities carrying out similar activities that are exposed to such risks are covered by AML/CFT requirements, regardless of whether they qualify as credit institutions or financial institutions. Therefore, it is appropriate to include consumer and mortgage creditors and intermediaries that are not credit institutions or financial institutions but that are, as a result of their activities, exposed to money laundering and terrorist financing risks. In many cases, however,		LT: (Comments): It is not clear what does the “involvement” would mean in practice. Provisions of explanatory nature in recitals could be useful. What level of involvement should be? Practical application in MS may differ.

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	there is a credit or financial institution involved that grants and processes the loan. Due to the involvement of the credit or financial institution, it is ensured that AML/CFT requirements are observed. In these cases, however, there is no need to subject persons intermediating consumer and mortgage credits to AML/CFT requirements in addition to the credit or financial institution, that grants and processes the credit and AML/CFT requirements should not apply to consumer and mortgage credit intermediaries in those cases. It should be ensured, however, that AML/CFT		

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	requirements are covered by the consumer and mortgage credit intermediary, if no obliged entity as a credit or financial institution is involved.		
(18) To ensure a consistent approach, it is necessary to clarify which entities in the investment sector are subject to AML/CFT requirements. Although collective investment undertakings already fell within the scope of Directive (EU) 2015/849, it is necessary to align the relevant terminology with the current Union investment fund legislation, namely Directive 2009/65/EC of the European	(18) To ensure a consistent approach, it is necessary to clarify which entities in the investment sector are subject to AML/CFT requirements. Although collective investment undertakings already fell within the scope of Directive (EU) 2015/849, it is necessary to align the relevant terminology with the current Union investment fund legislation, namely Directive 2009/65/EC of the European		

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Parliament and of the Council ¹⁷ and Directive 2011/61/EU of the European Parliament and of the Council ¹⁸ . Because funds might be constituted without legal personality, the inclusion of their managers in the scope of this Regulation is also necessary. AML/CFT requirements should apply regardless of the form in which units or shares in a fund are made available for purchase in the Union, including where units or shares are directly or indirectly	Parliament and of the Council ¹⁹ and Directive 2011/61/EU of the European Parliament and of the Council ²⁰ . Because funds might be constituted without legal personality, the inclusion of their managers in the scope of this Regulation is also necessary. AML/CFT requirements should apply regardless of the form in which units or shares in a fund are made available for purchase in the Union, including where units or shares are directly or indirectly		

- ¹⁷ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).
- ¹⁸ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).
- ¹⁹ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).
- ²⁰ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

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offered to investors established in the Union or placed with such investors at the initiative of the manager or on behalf of the manager.	offered to investors established in the Union or placed with such investors at the initiative of the manager or on behalf of the manager.		
(19) It is important that AML/CFT requirements apply in a proportionate manner and that the imposition of any requirement is proportionate to the role that obliged entities can play in the prevention of money laundering and terrorist financing. To this end, it should be possible for Member States in line with the risk base approach of this Regulation to exempt certain operators from AML/CFT requirements, where the	(19) It is important that AML/CFT requirements apply in a proportionate manner and that the imposition of any requirement is proportionate to the role that obliged entities can play in the prevention of money laundering and terrorist financing. To this end, it should be possible for Member States in line with the risk base approach of this Regulation to exempt certain operators from AML/CFT requirements, where the		

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activities they perform present low money laundering and terrorist financing risks and where the activities are limited in nature. To ensure transparent and consistent application of such exemptions across the Union, a mechanism should be put in place allowing the Commission to verify the necessity of the exemptions to be granted. The Commission should also publish such exemptions on a yearly basis in the <i>Official Journal of the European Union</i> .	activities they perform present low money laundering and terrorist financing risks and where the activities are limited in nature. To ensure transparent and consistent application of such exemptions across the Union, a mechanism should be put in place allowing the Commission to verify the necessity of the exemptions to be granted. The Commission should also publish such exemptions on a yearly basis in the <i>Official Journal of the European Union</i> .		
(20) A consistent set of rules on internal systems and controls that applies to all obliged entities operating in the internal market will	(20) A consistent set of rules on internal systems and controls that applies to all obliged entities operating in the internal market will		

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strengthen AML/CFT compliance and make supervision more effective. In order to ensure adequate mitigation of money laundering and terrorist financing risks, obliged entities should have in place an internal control framework consisting of risk-based policies, controls and procedures and clear division of responsibilities throughout the organisation. In line with the risk-based approach of this Regulation, those policies, controls and procedures should be proportionate to the nature and size of the obliged entity and respond to the risks of money laundering and terrorist financing that the entity faces.	strengthen AML/CFT compliance and make supervision more effective. In order to ensure adequate mitigation of money laundering and terrorist financing risks, obliged entities should have in place an internal control framework consisting of risk-based policies, controls and procedures and clear division of responsibilities throughout the organisation. In line with the risk-based approach of this Regulation, those policies, controls and procedures should be proportionate to the nature and size of the obliged entity and respond to the risks of money laundering and terrorist financing that the entity faces.		

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(21) An appropriate risk-based approach requires obliged entities to identify the inherent risks of money laundering and terrorist financing that they face by virtue of their business in order to mitigate them effectively and to ensure that their policies, procedures and internal controls are appropriate to address those inherent risks. In doing so, obliged entities should take into account the characteristics of their customers, the products, services or transactions offered, the countries or geographical areas concerned and the distribution channels used. In light of the evolving nature of risks, such risk	(21) An appropriate risk-based approach requires obliged entities to identify the inherent risks of money laundering and terrorist financing that they face by virtue of their business in order to mitigate them effectively and to ensure that their policies, procedures and internal controls are appropriate to address those inherent risks. In doing so, obliged entities should take into account the characteristics of their customers, the products, services or transactions offered, the countries or geographical areas concerned and the distribution channels used. Obliged entities should also take into account the	This modification mirrors edits of Article 8(1) (see below).	ES: (Comments): ok LV: (Comments): We would like to point out that it is necessary to correct the Article from Article 7 to Article 8, because the risk assessment is regulated in Article 8. IE: (Comments): Agreed

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assessment should be regularly updated.	supra-national risk assessment drawn up by the Commission or the national risk assessments. Relevant information can also be brought by the international standard-setters such as the FATF and, at the European level, by the Commission in its high-risk third countries lists. In light of the evolving nature of risks, such risk assessment should be regularly updated.		
(22) It is appropriate to take account of the characteristics and needs of smaller obliged entities, and to ensure treatment which is appropriate to their specific needs, and the nature of the business. This	(22) It is appropriate to take account of the characteristics and needs of smaller obliged entities, and to ensure treatment which is appropriate to their specific needs, and the nature of the business. This		

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may include exempting certain obliged entities from performing a risk assessment where the risks involved in the sector in which the entity operates are well understood.	may include exempting certain obliged entities from performing a risk assessment where the risks involved in the sector in which the entity operates are well understood.		
(23) The FATF has developed standards for jurisdictions to identify, and assess the risks of potential non-implementation or evasion of the targeted financial sanctions related to proliferation financing, and to take action to mitigate those risks. Those new standards introduced by the FATF today do not substitute nor undermine the existing strict requirements for countries to implement targeted financial	(23) The FATF has developed standards for jurisdictions to identify, and assess the risks of potential non-implementation or evasion of the targeted financial sanctions related to proliferation financing, and to take action to mitigate those risks. Those new standards introduced by the FATF ~~today~~ do not substitute nor undermine the existing strict requirements for countries to implement targeted financial	According to some Member States the word “today” seems to be redundant, therefore the Presidency proposes its deletion.	ES: (Comments): ok IE: (Comments): Agreed

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sanctions to comply with the relevant United Nations Security Council Regulations relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. Those existing obligations, as implemented at Union level by Council Decisions 2010/413/CFSP ²¹ and (CFSP) 2016/849 ²² as well as by Council Regulations (EU) No 267/2012 ²³	sanctions to comply with the relevant United Nations Security Council Regulations relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. Those existing obligations, as implemented at Union level by Council Decisions 2010/413/CFSP ²⁵ and (CFSP) 2016/849 ²⁶ as well as by Council		

- ²¹ 2010/413/CFSP: Council Decision of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ L 195, 27.7.2010, p. 39).
- ²² Council Decision (CFSP) 2016/849 of 27 May 2016 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2013/183/CFSP (OJ L 141, 28.5.2016, p. 79).
- ²³ Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ L 88, 24.3.2012, p. 1).
- ²⁵ 2010/413/CFSP: Council Decision of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ L 195, 27.7.2010, p. 39).
- ²⁶ Council Decision (CFSP) 2016/849 of 27 May 2016 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2013/183/CFSP (OJ L 141, 28.5.2016, p. 79).

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and (EU) 2017/1509 ²⁴ , remain strict rule-based obligations binding on all natural and legal persons within the Union.	Regulations (EU) No 267/2012 ²⁷ and (EU) 2017/1509 ²⁸ , remain strict rule-based obligations binding on all natural and legal persons within the Union.		
(24) In order to reflect the latest developments at international level, a requirement has been introduced by this Regulation to identify, understand, manage and mitigate risks of potential non-implementation or evasion of proliferation financing-related	(24) In order to reflect the latest developments at international level, a requirement has been introduced by this Regulation to identify, understand, manage and mitigate risks of potential non-implementation or evasion of proliferation financing-related		

²⁴ Council Regulation (EU) 2017/1509 of 30 August 2017 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Regulation (EC) No 329/2007 (OJ L 224, 31.8.2017, p. 1).

²⁷ Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ L 88, 24.3.2012, p. 1).

²⁸ Council Regulation (EU) 2017/1509 of 30 August 2017 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Regulation (EC) No 329/2007 (OJ L 224, 31.8.2017, p. 1).

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targeted financial sanctions at obliged entity level.	targeted financial sanctions at obliged entity level.		
(25) It is important that obliged entities take all measures at the level of their management to implement internal policies, controls and procedures and to implement AML/CFT requirements. While a person at management level should be identified as being responsible for implementing the obliged entity's policies, controls and procedures, the responsibility for the compliance with AML/CFT requirements should rest ultimately with the governing body of the entity. Tasks pertaining to the day-	(25) It is important that obliged entities take all measures at the level of their management to implement internal policies, controls and procedures and to implement AML/CFT requirements. While a ~~person at management level~~ member of the management body should be identified as being responsible for implementing the obliged entity's policies, controls and procedures, the responsibility for the compliance with AML/CFT requirements should rest ultimately with the governing body of the	The aim of proposed changes is to bring the recital to line with the new wording of Art. 9.	BE: (Comments): NBB: We are not in favor of the proposed completion of this recital. It is clear that the AML compliance function is located in the second line of defense and should of course not be mingled with related tasks which are part of the first line of defense. However, making a distinction within the compliance function itself, between day-to-day operations and control functions, seems rather artificial given that all the tasks of the AML Compliance Officer are related to the concrete steering of the AML/CFT policy in the obliged entity, be it through organizational measures, training, monitoring, STR reporting etc. It goes without saying that in larger institutions, the AML Compliance Officer will not work alone and

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to-day implementation of the obliged entity's AML/CFT policies, controls and procedures should be entrusted to a compliance officer.	entity. Tasks pertaining to the day-to-day implementation of the obliged entity's AML/CFT policies, controls and procedures should be entrusted to a compliance officer manager . However, for larger obliged entities or entities that are exposed to higher ML-TF risks, the responsibility of the day-to-day implementation of AML-CFT policies and procedures on one hand, and the responsibility of compliance controls on the other, can be entrusted to two different persons positions . In particular, the responsibility of AML-CFT compliance controls may be entrusted to the head of		will have direct reports, which already allows some kind of separation of tasks in practice. However, making more than one person responsible for the function risks to result in : i. a dilution of responsibilities, where it is not entirely clear anymore who is responsible for what, and ii. in a loss of a holistic view on all aspects covered by the function. We therefore insist that the final responsibility for this function lies <u>with one person</u>, without prejudice to organize the function in light of the nature, size and complexity of the institution. FR: (Comments): The term “officer” should have been kept and not changed to “manager” to be consistent with AMLR art. 9. Day-to-day implementation of AML-CTF can’t be entrusted with the

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	compliance provided by prudential regulations, where obliged entities are subjected to such requirements. This organisation ensures where justified a better effectiveness of the compliance function within major entities and promotes the avoidance of conflicts of interests.		compliance manager (who is often the director-general). It seems impossible for big groups. ES: (Comments): We agree with the first proposed change but not with the second. In order to avoid any misunderstanding and to achieve more alignment with article 9 of AMLR which paragraph 3 states that <i>“Obliged entities shall have an <u>AML compliance officer</u> (...) responsible for the policies, procedures and controls in the day-to-day operation of the obliged entity’s AML/CFT...”</i> we suggest the following amendments: <i>“Tasks pertaining to the day-to-day <u>implementation operation</u> of the obliged entity’s AML/CFT policies, controls and procedures should be entrusted to an <u>AML compliance officer</u>.”</i>

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			IE: (Comments): Agreed DK: (Comments): DK: We do not oppose the addendum but find that it should also be encapsulated that many obliged entities consist of entities with a few or a single person. Therefore, the opposite situation of the addendum should also be covered. We would suggest adding the following before the addendum: “[...] in consideration of the size and nature of the obliged entity”.
(26) For effective implementation of AML/CFT measures, it is also vital that the employees of obliged entities, as	(26) For effective implementation of AML/CFT measures, it is also vital that the employees of obliged entities, as		

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well as their agents and distributors, who have a role in their implementation understand the requirements and the internal policies, controls and procedures in place in the entity. Obligated entities should put in place measures, including training programmes, to this effect.	well as their agents and distributors, who have a role in their implementation understand the requirements and the internal policies, controls and procedures in place in the entity. Obligated entities should put in place measures, including training programmes, to this effect.		
(27) Individuals entrusted with tasks related to an obliged entity's compliance with AML/CFT requirements should undergo assessment of their skills, knowledge, expertise, integrity and conduct. Performance by employees of tasks related to the obliged entity's compliance with	(27) Individuals directly participating in the implementation of AML-CFT requirements ~~entrusted with tasks related to an obliged entity's compliance with AML/CFT requirements~~ should undergo assessment of their skills, knowledge, expertise, integrity and	MS were in favour of a clarification concerning the scope of Article 11 (2). The Presidency proposes to modify recital 27 to specify that the assessment shall be done by employees or persons in a comparable position, such as external service provider or seconded staff (see below).	SI: (Comments): Minor editorial remark: the word "untrusted" should read "entrusted". ES: (Comments): A minor suggestion for consistency with the new text. Having changed "external service provider" by "service provider" in

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the AML/CFT framework in relation to customers with whom they have a close private or professional relationship can lead to conflicts of interests and undermine the integrity of the system. Therefore, employees in such situations should be prevented from performing any tasks related to the obliged entity's compliance with the AML/CFT framework in relation to such customers.	conduct. Performance by employees or persons in a comparable position of tasks related to the obliged entity's compliance with the AML/CFT framework in relation to customers with whom they have a close private or professional relationship can lead to conflicts of interests and undermine the integrity of the system. Therefore, employees persons in such situations should be prevented from performing any tasks related to the obliged entity's compliance with the AML/CFT framework in relation to such customers. These requirements should be applicable to any person untrusted with AML-CFT		art.6, this latter should appear at the end of this recital: "They apply to employees or to any person in a comparable position, such as an ~~external~~ service provider or seconded staff." IE: (Comments): Agreed DK: (Comments): DK: Should it be written "entrusted" instead of "untrusted"?

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	related tasks by the obliged entity, irrespective of its employment status. They apply to employees or to any person in a comparable position, such as an external service provider or seconded staff.		
(28) The consistent implementation of group-wide AML/CFT policies and procedures is key to the robust and effective management of money laundering and terrorist financing risks within the group. To this end, group-wide policies, controls and procedures should be adopted and implemented by the parent undertaking. Obligated entities	(28) The consistent implementation of group-wide AML/CFT policies and procedures is key to the robust and effective management of money laundering and terrorist financing risks within the group. To this end, group-wide policies, controls and procedures should be adopted and implemented by the parent undertaking. Obligated entities		

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within the group should be required to exchange information when such sharing is relevant for preventing money laundering and terrorist financing. Information sharing should be subject to sufficient guarantees in terms of confidentiality, data protection and use of information. AMLA should have the task of drawing up draft regulatory standards specifying the minimum requirements of group-wide procedures and policies, including minimum standards for information sharing within the group and the role and responsibilities of parent undertakings that are not themselves obliged entities.	within the group should be required to exchange information when such sharing is relevant for preventing money laundering and terrorist financing. Information sharing should be subject to sufficient guarantees in terms of confidentiality, data protection and use of information. AMLA should have the task of drawing up draft regulatory standards specifying the minimum requirements of group-wide procedures and policies, including minimum standards for information sharing within the group and the role and responsibilities of parent undertakings that are not themselves obliged entities.		

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(29) In addition to groups, other structures exist, such as networks or partnerships, in which obliged entities might share common ownership, management and compliance controls. To ensure a level playing field across the sectors whilst avoiding overburdening it, AMLA should identify those situations where similar group-wide policies should apply to those structures.	(29) In addition to groups, other structures exist, such as networks or partnerships, in which obliged entities might share common ownership, management and compliance controls. To ensure a level playing field across the sectors whilst avoiding overburdening it, AMLA should identify those situations where similar group-wide policies should apply to those structures.		DK: (Comments): DK: In order to avoid misunderstandings, we would propose to delete “might” from this recital. The use of “might” suggests a widening of entities where group-wide policies are required, but where it doesn’t make sense. Some entities are somehow linked, by e.g. a franchise agreement or in a network set-up, but where there is no actual interaction between the parties. With this wording entities might be facing new obligations, without any merit in terms of AML/CFT. Proposed wording: (29) <i>In addition to groups, other structures exist, such as networks or partnerships, in which obliged entities ~~might~~ share common ownership, management and compliance controls. To ensure a level playing field across the</i>

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			<i>sectors whilst avoiding overburdening it, AMLA should identify those situations where similar group-wide policies should apply to those structures.</i>
(30) There are circumstances where branches and subsidiaries of obliged entities are located in third countries where the minimum AML/CFT requirements, including data protection obligations, are less strict than the Union AML/CFT framework. In such situations, and in order to fully prevent the use of the Union financial system for the purposes of money laundering and terrorist financing and to ensure the highest standard of protection for personal data of Union citizens, those branches and subsidiaries	(30) There are circumstances where branches and subsidiaries of obliged entities are located in third countries where the minimum AML/CFT requirements, including data protection obligations, are less strict than the Union AML/CFT framework. In such situations, and in order to fully prevent the use of the Union financial system for the purposes of money laundering and terrorist financing and to ensure the highest standard of protection for personal data of Union citizens, those		

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should comply with AML/CFT requirements laid down at Union level. Where the law of a third country does not permit compliance with those requirements, for example because of limitations to the group's ability to access, process or exchange information due to an insufficient level of data protection or banking secrecy law in the third country, obliged entities should take additional measures to ensure the branches and subsidiaries located in that country effectively handle the risks. AMLA should be tasked with developing draft technical standards specifying the type of such additional measures.	branches and subsidiaries should comply with AML/CFT requirements laid down at Union level. Where the law of a third country does not permit compliance with those requirements, for example because of limitations to the group's ability to access, process or exchange information due to an insufficient level of data protection or banking secrecy law in the third country, obliged entities should take additional measures to ensure the branches and subsidiaries located in that country effectively handle the risks. AMLA should be tasked with developing draft technical standards specifying		

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	the type of such additional measures.		
(31) Customer due diligence requirements are essential to ensure that obliged entities identify, verify and monitor their business relationships with their clients, in relation to the money laundering and terrorist financing risks that they pose. Accurate identification and verification of data of prospective and existing customers are essential for understanding the risks of money laundering and terrorist financing associated with clients, whether they are natural or legal persons.	(31) Customer due diligence requirements are essential to ensure that obliged entities identify, verify and monitor their business relationships with their clients, in relation to the money laundering and terrorist financing risks that they pose. Accurate identification and verification of data of prospective and existing customers are essential for understanding the risks of money laundering and terrorist financing associated with clients, whether they are natural or legal persons.		

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(32) It is necessary to achieve a uniform and high standard of customer due diligence in the Union, relying on harmonised requirements for the identification of customers and verification of their identity, and reducing national divergences to allow for a level playing field across the internal market and for a consistent application of provisions throughout the Union. At the same time, it is essential that obliged entities apply customer due diligence requirements in a risk-based manner. The risk-based approach is not an unduly permissive option for obliged entities. It involves the use of	(32) It is necessary to achieve a uniform and high standard of customer due diligence in the Union, relying on harmonised requirements for the identification of customers and verification of their identity, and reducing national divergences to allow for a level playing field across the internal market and for a consistent application of provisions throughout the Union. At the same time, it is essential that obliged entities apply customer due diligence requirements in a risk-based manner. The risk-based approach is not an unduly permissive option for obliged entities. It involves the use of		

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evidence-based decision-making in order to target more effectively the risks of money laundering and terrorist financing facing the Union and those operating within it.	evidence-based decision-making in order to target more effectively the risks of money laundering and terrorist financing facing the Union and those operating within it.		
(33) Obligated entities should not be required to apply due diligence measures on customers carrying out occasional or linked transactions below a certain value, unless there is suspicion of money laundering or terrorist financing. Whereas the EUR 10 000 threshold applies to most occasional transactions, obliged entities which operate in sectors or carry out transactions that present a higher risk of money laundering and terrorist financing	(33) Obligated entities should not be required to apply due diligence measures on customers carrying out occasional or linked transactions below a certain value, unless there is suspicion of money laundering or terrorist financing. Whereas the EUR 10 000 threshold applies to most occasional transactions, obliged entities which operate in sectors or carry out transactions that present a higher risk of money laundering and terrorist financing		ES: (Comments): From a risk perspective, we cannot support a general threshold of €10m as it is now in the proposal. Bearing in mind that our current threshold is much lower, and although it is foreseen that AMLA may introduce a granularity criterion for sectors or transactions that present a higher risk, we believe that it would send the wrong message to our obliged entities to approve a text that for the time being only increases considerably the thresholds to be applied. For this reason, we believe it is essential that until AMLA

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should be required to apply customer due diligence for transactions with lower thresholds. To identify the sectors or transactions as well as the adequate thresholds for those sectors or transactions, AMLA should develop dedicated draft regulatory technical standards.	should be required to apply customer due diligence for transactions with lower thresholds. To identify the sectors or transactions as well as the adequate thresholds for those sectors or transactions, AMLA should develop dedicated draft regulatory technical standards.		approves these new thresholds, it should be made clear that Member States can continue to apply their own thresholds.
(34) Some business models are based on the obliged entity having a business relationship with a merchant for offering payment initiation services through which the merchant gets paid for the provision of goods or services, and not with the merchant's customer, who authorises the payment	(34) Some business models are based on the obliged entity having a business relationship with a merchant for offering payment initiation services through which the merchant gets paid for the provision of goods or services, and not with the merchant's customer, who authorises the payment		FR: (Comments): This provision is hazardous. Due diligence measures towards the end customer can be key to detecting money laundering. As written, the end customer might use the merchant as a proxy to hide their tracks. Due diligence obligations should also apply to the end customer.

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initiation service to initiate a single or one-off transaction to the merchant. In such a business model, the obliged entity's customer for the purpose of AML/CFT rules is the merchant, and not the merchant's customer. Therefore, customer due diligence obligations should be applied by the obliged entity vis-a-vis the merchant.	initiation service to initiate a single or one-off transaction to the merchant. In such a business model, the obliged entity's customer for the purpose of AML/CFT rules is the merchant, and not the merchant's customer. Therefore, customer due diligence obligations should be applied by the obliged entity vis-a-vis the merchant.		(34) <i>Some business models are based on the obliged entity having a business relationship with a merchant for offering payment initiation services through which the merchant gets paid for the provision of goods or services, and not with the merchant's customer, who authorises the payment initiation service to initiate a single or one-off transaction to the merchant. In such a business model, the obliged entity's customers for the purpose of AML/CFT rules is the merchant, and not the merchant's customer. Therefore, customer due diligence obligations should be applied by the obliged entity vis-a-vis both the merchant and the final customer.</i>
(35) Directive (EU) 2015/849, despite having harmonised the rules of Member States in the area of customer identification obligations to a certain degree, did not lay	(35) Directive (EU) 2015/849, despite having harmonised the rules of Member States in the area of customer identification obligations to a certain degree, did not lay		

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down detailed rules in relation to the procedures to be followed by obliged entities. In view of the crucial importance of this aspect in the prevention of money laundering and terrorist financing, it is appropriate, in accordance with the risk-based approach, to introduce more specific and detailed provisions on the identification of the customer and on the verification of the customer's identity, whether in relation to natural or legal persons, legal arrangements such as trusts or entities having legal capacity under national law.	down detailed rules in relation to the procedures to be followed by obliged entities. In view of the crucial importance of this aspect in the prevention of money laundering and terrorist financing, it is appropriate, in accordance with the risk-based approach, to introduce more specific and detailed provisions on the identification of the customer and on the verification of the customer's identity, whether in relation to natural or legal persons, legal arrangements such as trusts or entities having legal capacity under national law.		
(36) Technological developments and progress in	(36) Technological developments and progress in		

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digitalisation enable a secure remote or electronic identification and verification of prospective and existing customers and can facilitate the remote performance of customer due diligence. The identification solutions as set out in Regulation (EU) No 910/2014 of the European Parliament and of the Council and the proposal for an amendment to it in relation to a framework for a European Digital Identity ²⁹ enable secure and trusted means of customer identification and verification for both	digitalisation enable a secure remote or electronic identification and verification of prospective and existing customers and can facilitate the remote performance of customer due diligence. The identification solutions as set out in Regulation (EU) No 910/2014 of the European Parliament and of the Council and the proposal for an amendment to it in relation to a framework for a European Digital Identity ³⁰ enable secure and trusted means of customer identification and verification for both		

²⁹ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73) and the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity, COM/2021/281 final.

³⁰ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73) and the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity, COM/2021/281 final.

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prospective and existing customers and can facilitate the remote performance of customer due diligence. The electronic identification as set out in that Regulation should be taken into account and accepted by obliged entities for the customer identification process. These means of identification may present, where appropriate risk mitigation measures are in place, a standard or even low level of risk.	prospective and existing customers and can facilitate the remote performance of customer due diligence. The electronic identification as set out in that Regulation should be taken into account and accepted by obliged entities for the customer identification process. These means of identification may present, where appropriate risk mitigation measures are in place, a standard or even low level of risk.		
(37) To ensure that the AML/CFT framework prevents illicit funds from entering the financial system, obliged entities should carry out customer due	(37) To ensure that the AML/CFT framework prevents illicit funds from entering the financial system, obliged entities should carry out customer due		

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diligence before entering into business relationships with prospective clients, in line with the risk-based approach. Nevertheless, in order not to unnecessarily delay the normal conduct of business, obliged entities may collect the information from the prospective customer during the establishment of a business relationship. Credit and financial institutions may obtain the necessary information from the prospective customers once the relationship is established, provided that transactions are not initiated until the customer due diligence process is successfully completed.	diligence before entering into business relationships with prospective clients, in line with the risk-based approach. Nevertheless, in order not to unnecessarily delay the normal conduct of business, obliged entities may collect the information from the prospective customer during the establishment of a business relationship. Credit and financial institutions may obtain the necessary information from the prospective customers once the relationship is established, provided that transactions are not initiated until the customer due diligence process is successfully completed.		

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(38) Depositors whose funds are the proceeds of money laundering should be excluded from repayment by a deposit guarantee scheme. To prevent that illicit funds are reimbursed to such depositors, credit institutions should, under the oversight of the supervisors, perform customer due diligence of their clients where the credit institutions have been determined failing or likely to fail, or when deposits are defined as unavailable. Credit institutions should report any suspicious transactions identified in the performance of such customer due diligence to the FIU.	(38) ~~Depositors whose funds are the proceeds of money laundering~~ Deposits arising out of transactions in connection with which there has been a criminal conviction for money laundering as defined in Article 1(2) of Directive 2005/60/EC ” should be excluded from repayment by a deposit guarantee scheme. To prevent that illicit funds are reimbursed to such depositors, credit institutions should, under the oversight of the supervisors, perform customer due diligence of their clients where the credit institutions have been determined failing or likely to fail, or when deposits are defined as unavailable.	The proposed change is reflecting the opinion of some Member States that the original text is too broad and not in line with DGS Directive, article 5(1)(c).	ES: (Comments): ok IE: (Comments): We do not agree with gathering and processing of special categories of data, including criminal convictions. Why is there a reference to Directive 2005/60/EC? Was this Directive not repealed when the 2008 Directive was adopted? The definition of money laundering in Article 2 of this Regulation should be the one used.

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	Credit institutions should report any suspicious transactions identified in the performance of such customer due diligence to the FIU.		
(39) The customer due diligence process is not limited to the identification and verification of the customer's identity. Before entering into business relationships or carrying out occasional transactions, obliged entities should also assess the purpose and nature of a business relationship. Pre-contractual or other information about the proposed product or service that is communicated to the prospective customer may	(39) The customer due diligence process is not limited to the identification and verification of the customer's identity. Before entering into business relationships or carrying out occasional transactions, obliged entities should also assess the purpose and nature of a business relationship. Pre-contractual or other information about the proposed product or service that is communicated to the prospective customer may		

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contribute to the understanding of that purpose. Obligated entities should always be able to assess the purpose and nature of a prospective business relationship in an unambiguous manner. Where the offered service or product enables customers to carry out various types of transactions or activities, obliged entities should obtain sufficient information on the intention of the customer regarding the use to be made of that relationship.	contribute to the understanding of that purpose. Obligated entities should always be able to assess the purpose and nature of a prospective business relationship in an unambiguous manner. Where the offered service or product enables customers to carry out various types of transactions or activities, obliged entities should obtain sufficient information on the intention of the customer regarding the use to be made of that relationship.		
(40) To ensure the effectiveness of the AML/CFT framework, obliged entities should regularly review the information obtained	(40) To ensure the effectiveness of the AML/CFT framework, obliged entities should regularly review the information obtained		

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from their customers, in accordance with the risk-based approach. Obligated entities should also set up a monitoring system to detect atypical transactions that might raise money laundering or terrorist financing suspicions. To ensure the effectiveness of the transaction monitoring, obliged entities' monitoring activity should in principle cover all services and products offered to customers and all transactions which are carried out on behalf of the costumer or offered to the customer by the obliged entity. However, not all transactions need to be scrutinised individually. The intensity of the monitoring should respect the risk-	from their customers, in accordance with the risk-based approach. Obligated entities should also set up a monitoring system to detect atypical transactions that might raise money laundering or terrorist financing suspicions. To ensure the effectiveness of the transaction monitoring, obliged entities' monitoring activity should in principle cover all services and products offered to customers and all transactions which are carried out on behalf of the costumer or offered to the customer by the obliged entity. However, not all transactions need to be scrutinised individually. The intensity of the monitoring should respect the risk-		

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based approach and be designed around precise and relevant criteria, taking account, in particular, of the characteristics of the customers and the risk level associated with them, the products and services offered, and the countries or geographical areas concerned. AMLA should develop guidelines to ensure that the intensity of the monitoring of business relationships and of transactions is adequate and proportionate to the level of risk.	based approach and be designed around precise and relevant criteria, taking account, in particular, of the characteristics of the customers and the risk level associated with them, the products and services offered, and the countries or geographical areas concerned. AMLA should develop guidelines to ensure that the intensity of the monitoring of business relationships and of transactions is adequate and proportionate to the level of risk.		
(41) In order to ensure consistent application of this Regulation, AMLA should have the task of drawing up draft regulatory technical standards on customer	(41) In order to ensure consistent application of this Regulation, AMLA should have the task of drawing up draft regulatory technical standards on		

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due diligence. Those regulatory technical standards should set out the minimum set of information to be obtained by obliged entities in order to enter into new business relationships with customers or assess ongoing ones, according to the level of risk associated with each customer. Furthermore, the draft regulatory technical standards should provide sufficient clarity to allow market players to develop secure, accessible and innovative means of verifying customers' identity and performing customer due diligence, also remotely, while respecting the principle of technology neutrality. The Commission should be empowered	customer due diligence. Those regulatory technical standards should set out the minimum set of information to be obtained by obliged entities in order to enter into new business relationships with customers or assess ongoing ones, according to the level of risk associated with each customer. Furthermore, the draft regulatory technical standards should provide sufficient clarity to allow market players to develop secure, accessible and innovative means of verifying customers' identity and performing customer due diligence, also remotely, while respecting the principle of technology neutrality. The Commission should be		

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to adopt those draft regulatory technical standards. Those specific tasks are in line with the role and responsibilities of AMLA as provided in Regulation <i>[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]</i> .	empowered to adopt those draft regulatory technical standards. Those specific tasks are in line with the role and responsibilities of AMLA as provided in Regulation <i>[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]</i> .		
(42) The harmonisation of customer due diligence measures should not only seek to achieve consistent, and consistently effective, understanding of the risks associated with an existing or prospective customer regardless of where the business relationship is opened in the Union, and their	(42) The harmonisation of customer due diligence measures should not only seek to achieve consistent, and consistently effective, understanding of the risks associated with an existing or prospective customer regardless of where the business relationship is opened in the Union, and their		

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harmonisation will help to achieve this aim. It should also ensure that the information obtained in the performance of customer due diligence is not used by obliged entities to pursue de-risking practices which may result in circumventing other legal obligations, in particular those laid down in Directive 2014/92 of the European Parliament and of the Council ³¹ or Directive 2015/2366 of the European Parliament and of the Council ³² , without achieving	harmonisation will help to achieve this aim. It should also ensure that the information obtained in the performance of customer due diligence is not used by obliged entities to pursue de-risking practices which may result in circumventing other legal obligations, in particular those laid down in Directive 2014/92 of the European Parliament and of the Council ³³ or Directive 2015/2366 of the European Parliament and of the Council ³⁴ , without achieving		

³¹ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214).

³² Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

³³ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214).

³⁴ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

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the Union's objectives in the prevention of money laundering and terrorist financing. To enable the proper supervision of compliance with the customer due diligence obligations, it is important that obliged entities keep record of the actions undertaken and the information obtained during the customer due diligence process, irrespective of whether a new business relationship is established with them and of whether they have submitted a suspicious transaction report upon refusing to establish a business relationship. Where the obliged entity takes a decision to not enter into a business relationship with a	the Union's objectives in the prevention of money laundering and terrorist financing. To enable the proper supervision of compliance with the customer due diligence obligations, it is important that obliged entities keep record of the actions undertaken and the information obtained during the customer due diligence process, irrespective of whether a new business relationship is established with them and of whether they have submitted a suspicious transaction report upon refusing to establish a business relationship. Where the obliged entity takes a decision to not enter into a business relationship with a		

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prospective customer, the customer due diligence records should include the grounds for such a decision. This will enable supervisory authorities to assess whether obliged entities have appropriately calibrated their customer due diligence practices and how the entity's risk exposure evolves, as well as help building statistical evidence on the application of customer due diligence rules by obliged entities throughout the Union.	prospective customer, the customer due diligence records should include the grounds for such a decision. This will enable supervisory authorities to assess whether obliged entities have appropriately calibrated their customer due diligence practices and how the entity's risk exposure evolves, as well as help building statistical evidence on the application of customer due diligence rules by obliged entities throughout the Union.		
(43) The approach for the review of existing customers in the current AML/CFT framework is already risk-based. However, given the	(43) The approach for the review of existing customers in the current AML/CFT framework is already risk-based. However, given the		

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higher risk of money laundering, its predicate offences and terrorist financing associated with certain intermediary structures, that approach might not allow for the timely detection and assessment of risks. It is therefore important to ensure that clearly specified categories of existing customers are also monitored on a regular basis.	higher risk of money laundering, its predicate offences and terrorist financing associated with certain intermediary structures, that approach might not allow for the timely detection and assessment of risks. It is therefore important to ensure that clearly specified categories of existing customers are also monitored on a regular basis.		
(44) Risk itself is variable in nature, and the variables, on their own or in combination, may increase or decrease the potential risk posed, thus having an impact on the appropriate level of preventive measures, such as customer due diligence measures.	(44) Risk itself is variable in nature, and the variables, on their own or in combination, may increase or decrease the potential risk posed, thus having an impact on the appropriate level of preventive measures, such as customer due diligence measures.		

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(45) In low risk situations, obliged entities should be able to apply simplified customer due diligence measures. This does not equate to an exemption or absence of customer due diligence measures. It rather consists in a simplified or reduced set of scrutiny measures, which should however address all components of the standard customer due diligence procedure. In line with the risk-based approach, obliged entities should nevertheless be able to reduce the frequency or intensity of their customer or transaction scrutiny, or rely on adequate assumptions with regard to the	(45) In low risk situations, obliged entities should be able to apply simplified customer due diligence measures. This does not equate to an exemption or absence of customer due diligence measures. It rather consists in a simplified or reduced set of scrutiny measures, which should however address all components of the standard customer due diligence procedure. In line with the risk-based approach, obliged entities should nevertheless be able to reduce the frequency or intensity of their customer or transaction scrutiny, or rely on adequate assumptions with regard to the		

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purpose of the business relationship or use of simple products. The regulatory technical standards on customer due diligence should set out the specific simplified measures that obliged entities may implement in case of lower risk situations identified in the Supranational Risk Assessment of the Commission. When developing draft regulatory technical standards, AMLA should have due regard to preserving social and financial inclusion.	purpose of the business relationship or use of simple products. The regulatory technical standards on customer due diligence should set out the specific simplified measures that obliged entities may implement in case of lower risk situations identified in the Supranational Risk Assessment of the Commission. When developing draft regulatory technical standards, AMLA should have due regard to preserving social and financial inclusion.		
(46) It should be recognised that certain situations present a greater risk of money laundering or terrorist financing. Although the identity and business profile of all	(46) It should be recognised that certain situations present a greater risk of money laundering or terrorist financing. Although the identity and business profile of all		

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customers should be established with the regular application of customer due diligence requirements, there are cases in which particularly rigorous customer identification and verification procedures are required. Therefore, it is necessary to lay down detailed rules on such enhanced due diligence measures, including specific enhanced due diligence measures for cross-border correspondent relationships.	customers should be established with the regular application of customer due diligence requirements, there are cases in which particularly rigorous customer identification and verification procedures are required. Therefore, it is necessary to lay down detailed rules on such enhanced due diligence measures, including specific enhanced due diligence measures for cross-border correspondent relationships.		
(47) Cross-border correspondent relationships with a third-country's respondent institution are characterised by their on-going, repetitive nature. Moreover, not all	(47) Cross-border correspondent relationships with a third-country's respondent institution are characterised by their on-going, repetitive nature. Moreover, not all		

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cross-border correspondent banking services present the same level of money laundering and terrorist financing risks. Therefore, the intensity of the enhanced due diligence measures should be determined by application of the principles of the risk based approach. However, the risk based approach should not be applied when interacting with third-country's respondent institutions that have no physical presence where they are incorporated. Given the high risk of money laundering and terrorist financing inherent in shell banks, credit institutions and financial institutions should refrain from entertaining any	cross-border correspondent banking services present the same level of money laundering and terrorist financing risks. Therefore, the intensity of the enhanced due diligence measures should be determined by application of the principles of the risk based approach. However, the risk based approach should not be applied when interacting with third-country's respondent institutions that have no physical presence where they are incorporated. Given the high risk of money laundering and terrorist financing inherent in shell banks, credit institutions and financial institutions should refrain from entertaining any		

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

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(49) In order to protect the proper functioning of the Union financial system from money laundering and terrorist financing, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission to identify third countries, whose shortcomings in their national AML/CFT regimes represent a threat to the integrity of the Union's internal market. The changing nature of money laundering and terrorist financing threats from outside the Union, facilitated by a constant evolution of technology and of the means at	(49) In order to protect the proper functioning of the Union financial system from money laundering and terrorist financing, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission to identify third countries, whose shortcomings in their national AML/CFT regimes represent a threat to the integrity of the Union's internal market. The changing nature of money laundering and terrorist financing threats from outside the Union, facilitated by a constant evolution of technology and of the means at		

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the disposal of criminals, requires that quick and continuous adaptations of the legal framework as regards third countries be made in order to address efficiently existing risks and prevent new ones from arising. The Commission should take into account information from international organisations and standard setters in the field of AML/CFT, such as FATF public statements, mutual evaluation or detailed assessment reports or published follow-up reports, and adapt its assessments to the changes therein, where appropriate.	the disposal of criminals, requires that quick and continuous adaptations of the legal framework as regards third countries be made in order to address efficiently existing risks and prevent new ones from arising. The Commission should take into account information from international organisations and standard setters in the field of AML/CFT, such as FATF public statements, mutual evaluation or detailed assessment reports or published follow-up reports, and adapt its assessments to the changes therein, where appropriate.		

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(50) Third countries “subject to a call for action” by the relevant international standard-setter (the FATF) present significant strategic deficiencies of a persistent nature in their legal and institutional AML/CFT frameworks and their implementation which are likely to pose a high risk to the Union’s financial system. The persistent nature of the significant strategic deficiencies, reflective of the lack of commitment or continued failure by the third country to tackle them, signal a heightened level of threat emanating from those third countries, which requires an effective, consistent and harmonised mitigating response at	(50) Third countries “subject to a call for action” by the relevant international standard-setter (the FATF) present significant strategic deficiencies of a persistent nature in their legal and institutional AML/CFT frameworks and their implementation which are likely to pose a high risk to the Union’s financial system. The persistent nature of the significant strategic deficiencies, reflective of the lack of commitment or continued failure by the third country to tackle them, signal a heightened level of threat emanating from those third countries, which requires an effective, consistent and harmonised mitigating response at		

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Union level. Therefore, obliged entities should be required to apply the whole set of available enhanced due diligence measures to occasional transactions and business relationships involving those high-risk third countries to manage and mitigate the underlying risks. Furthermore, the high level of risk justifies the application of additional specific countermeasures, whether at the level of obliged entities or by the Member States. Such approach would avoid divergence in the determination of the relevant countermeasures, which would expose the entirety of Union's financial system to risks. Given its	Union level. Therefore, obliged entities should be required to apply the whole set of available enhanced due diligence measures to occasional transactions and business relationships involving those high-risk third countries to manage and mitigate the underlying risks. Furthermore, the high level of risk justifies the application of additional specific countermeasures, whether at the level of obliged entities or by the Member States. Such approach would avoid divergence in the determination of the relevant countermeasures, which would expose the entirety of Union's financial system to risks. Given its		

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technical expertise, AMLA can provide useful input to the Commission in identifying the appropriate countermeasures.	technical expertise, AMLA can provide useful input to the Commission in identifying the appropriate countermeasures.		
(51) Compliance weaknesses in both the legal and institutional AML/CFT framework and its implementation of third countries which are subject to “increased monitoring” by the FATF are susceptible to be exploited by criminals. This is likely to represent a risk for the Union’s financial system, which needs to be managed and mitigated. The commitment of these third countries to address identified weaknesses, while not eliminating the risk, justifies a	(51) Compliance weaknesses in both the legal and institutional AML/CFT framework and its implementation of third countries which are subject to “increased monitoring” by the FATF are susceptible to be exploited by criminals. This is likely to represent a risk for the Union’s financial system, which needs to be managed and mitigated. The commitment of these third countries to address identified weaknesses, while not eliminating the risk, justifies a		

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mitigating response, which is less severe than the one applicable to high-risk third countries. In these cases, Union's obliged entities should apply enhanced due diligence measures to occasional transactions and business relationships when dealing with natural persons or legal entities established in those third countries that are tailored to the specific weaknesses identified in each third country. Such granular identification of the enhanced due diligence measures to be applied would, in line with the risk-based approach, also ensure that the measures are proportionate to the level of risk. To ensure such	mitigating response, which is less severe than the one applicable to high-risk third countries. In these cases, Union's obliged entities should apply enhanced due diligence measures to occasional transactions and business relationships when dealing with natural persons or legal entities established in those third countries that are tailored to the specific weaknesses identified in each third country. Such granular identification of the enhanced due diligence measures to be applied would, in line with the risk-based approach, also ensure that the measures are proportionate to the level of risk. To ensure such		

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consistent and proportionate approach, the Commission should be able to identify which specific enhanced due diligence measures are required in order to mitigate country-specific risks. Given AMLA's technical expertise, it can provide useful input to the Commission to identify the appropriate enhanced due diligence measures.	consistent and proportionate approach, the Commission should be able to identify which specific enhanced due diligence measures are required in order to mitigate country-specific risks. Given AMLA's technical expertise, it can provide useful input to the Commission to identify the appropriate enhanced due diligence measures.		
(52) Countries that are not publicly identified as subject to calls for actions or increased monitoring by international standard setters might still pose a threat to the integrity of the Union's financial system. To	(52) Countries that are not publicly identified as subject to calls for actions or increased monitoring by international standard setters might still pose a threat to the integrity of the Union's financial system. To		

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mitigate those risks, it should be possible for the Commission to take action by identifying, based on a clear set of criteria and with the support of AMLA, third countries posing a specific and serious threat to the Union's financial system, which may be due to either compliance weaknesses or significant strategic deficiencies of a persistent nature in their AML/CFT regime, and the relevant mitigating measures. Those third countries should be identified by the Commission. According to the level of risk posed to the Union's financial system, the Commission should require the application of either all enhanced due diligence	mitigate those risks, it should be possible for the Commission to take action by identifying, based on a clear set of criteria and with the support of AMLA, third countries posing a specific and serious threat to the Union's financial system, which may be due to either compliance weaknesses or significant strategic deficiencies of a persistent nature in their AML/CFT regime, and the relevant mitigating measures. Those third countries should be identified by the Commission. According to the level of risk posed to the Union's financial system, the Commission should require the application of either all enhanced due diligence		

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measures and country-specific countermeasures, as it is the case for high-risk third countries, or country-specific enhanced customer due diligence, such as in the case of third countries with compliance weaknesses.	measures and country-specific countermeasures, as it is the case for high-risk third countries, or country-specific enhanced customer due diligence, such as in the case of third countries with compliance weaknesses.		
(53) Considering that there may be changes in the AML/CFT frameworks of those third countries or in their implementation, for example as result of the country's commitment to address the identified weaknesses or of the adoption of relevant AML/CFT measures to tackle them, which could change the nature and level of the risks emanating from them,	(53) Considering that there may be changes in the AML/CFT frameworks of those third countries or in their implementation, for example as result of the country's commitment to address the identified weaknesses or of the adoption of relevant AML/CFT measures to tackle them, which could change the nature and level of the risks emanating from them,		

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the Commission should regularly review the identification of those specific enhanced due diligence measures in order to ensure that they remain proportionate and adequate.	the Commission should regularly review the identification of those specific enhanced due diligence measures in order to ensure that they remain proportionate and adequate.		
(54) Potential external threats to the Union's financial system do not only emanate from third countries, but can also emerge in relation to specific customer risk factors or products, services, transactions or delivery channels which are observed in relation to a specific geographical area outside the Union. There is therefore a need to identify money laundering and terrorist financing trends, risks and	(54) Potential external threats to the Union's financial system do not only emanate from third countries, but can also emerge in relation to specific customer risk factors or products, services, transactions or delivery channels which are observed in relation to a specific geographical area outside the Union. There is therefore a need to identify money laundering and terrorist financing trends, risks and		

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methods to which Union's obliged entities may be exposed. AMLA is best placed to detect any emerging ML/TF typologies from outside the Union, to monitor their evolution with a view to providing guidance to the Union's obliged entities on the need to apply enhanced due diligence measures aimed at mitigating such risks.	methods to which Union's obliged entities may be exposed. AMLA is best placed to detect any emerging ML/TF typologies from outside the Union, to monitor their evolution with a view to providing guidance to the Union's obliged entities on the need to apply enhanced due diligence measures aimed at mitigating such risks.		
(55) Relationships with individuals who hold or who have held important public functions, within the Union or internationally, and particularly individuals from countries where corruption is widespread, may expose the financial sector to significant	(55) Relationships with individuals who hold or who have held important public functions, within the Union or internationally, and particularly individuals from countries where corruption is widespread, may expose the financial sector to significant		

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reputational and legal risks. The international effort to combat corruption also justifies the need to pay particular attention to such persons and to apply appropriate enhanced customer due diligence measures with respect to persons who are or who have been entrusted with prominent public functions and with respect to senior figures in international organisations. Therefore, it is necessary to specify measures which obliged entities should apply with respect to transactions or business relationships with politically exposed persons. To facilitate the risk-based approach, AMLA should be tasked with	reputational and legal risks. The international effort to combat corruption also justifies the need to pay particular attention to such persons and to apply appropriate enhanced customer due diligence measures with respect to persons who are or who have been entrusted with prominent public functions and with respect to senior figures in international organisations. Therefore, it is necessary to specify measures which obliged entities should apply with respect to transactions or business relationships with politically exposed persons. To facilitate the risk-based approach, AMLA should be tasked with		

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issuing guidelines on assessing the level of risks associated with a particular category of politically exposed persons, their family members or persons known to be close associates.	issuing guidelines on assessing the level of risks associated with a particular category of politically exposed persons, their family members or persons known to be close associates.		
(56) In order to identify politically exposed persons in the Union, lists should be issued by Member States indicating the specific functions which, in accordance with national laws, regulations and administrative provisions, qualify as prominent public functions. Member States should request each international organisation accredited on their	(56) In order to identify politically exposed persons in the Union, lists should be issued by Member States indicating the specific functions which, in accordance with national laws, regulations and administrative provisions, qualify as prominent public functions. Member States should request each international organisation accredited on their		

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territories to issue and keep up to date a list of prominent public functions at that international organisation. The Commission should be tasked with compiling and issuing a list, which should be valid across the Union, as regards persons entrusted with prominent public functions in Union institutions or bodies.	territories to issue and keep up to date a list of prominent public functions at that international organisation. The Commission should be tasked with compiling and issuing a list, which should be valid across the Union, as regards persons entrusted with prominent public functions in Union institutions or bodies.		
(57) When customers are no longer entrusted with a prominent public function, they can still pose a higher risk, for example because of the informal influence they could still exercise, or because their previous and current functions are linked. It is essential that obliged	(57) When customers are no longer entrusted with a prominent public function, they can still pose a higher risk, for example because of the informal influence they could still exercise, or because their previous and current functions are linked. It is essential that obliged		

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entities take into consideration those continuing risks and apply one or more enhanced due diligence measures until such time that the individuals are deemed to pose no further risk, and in any case for not less than 12 months following the time when they are no longer entrusted with a prominent public function.	entities take into consideration those continuing risks and apply one or more enhanced due diligence measures until such time that the individuals are deemed to pose no further risk, and in any case for not less than 12 months following the time when they are no longer entrusted with a prominent public function.		
(58) Insurance companies often do not have client relationships with beneficiaries of the insurance policies. However, they should be able to identify higher risk situations, such as when the proceeds of the policy benefit a politically exposed person. To	(58) Insurance companies often do not have client relationships with beneficiaries of the insurance policies. However, they should be able to identify higher risk situations, such as when the proceeds of the policy benefit a politically exposed person. To		

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determine whether this is the case, the insurance policy should include reasonable measures to identify the beneficiary, as if this person were a new client. Such measures can be taken at the time of the payout or at the time of the assignment of the policy, but not later.	determine whether this is the case, the insurance policy should include reasonable measures to identify the beneficiary, as if this person were a new client. Such measures can be taken at the time of the payout or at the time of the assignment of the policy, but not later.		
(59) Close private and professional relationships can be abused for money laundering and terrorist financing purposes. For that reason, measures concerning politically exposed persons should also apply to their family members and persons known to be close associates. Properly identifying family members and persons	(59) Close private and professional relationships can be abused for money laundering and terrorist financing purposes. For that reason, measures concerning politically exposed persons should also apply to their family members and persons known to be close associates. Properly identifying family members and persons		

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known to be close associates may depend on the socio-economic and cultural structure of the country of the politically exposed person. Against this background, AMLA should have the task of issuing guidelines on the criteria to use to identify persons who should be considered as close associate.	known to be close associates may depend on the socio-economic and cultural structure of the country of the politically exposed person. Against this background, AMLA should have the task of issuing guidelines on the criteria to use to identify persons who should be considered as close associate.		
(60) The requirements relating to politically exposed persons, their family members and close associates, are of a preventive and not criminal nature, and should not be interpreted as stigmatising politically exposed persons as being involved in criminal activity. Refusing a business relationship	(60) The requirements relating to politically exposed persons, their family members and close associates, are of a preventive and not criminal nature, and should not be interpreted as stigmatising politically exposed persons, their family members or close associates as being involved in		ES: (Comments): Ok IE: (Comments): Agreed

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with a person simply on the basis of a determination that they are a politically exposed person is contrary to the letter and spirit of this Regulation.	criminal activity. Refusing a business relationship with a person simply on the basis of a determination that they are a politically exposed person, their relative or a close associate is contrary to the letter and spirit of this Regulation.		
(61) In order to avoid repeated customer identification procedures, it is appropriate, subject to suitable safeguards, to allow obliged entities to rely on the customer information collected by other obliged entities. Where an obliged entity relies on another obliged entity, the ultimate responsibility for customer due diligence should remain with the	(61) In order to avoid repeated customer identification procedures, it is appropriate, subject to suitable safeguards, to allow obliged entities to rely on the customer information collected by other obliged entities. Where an obliged entity relies on another obliged entity, the ultimate responsibility for customer due diligence should remain with the		

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obliged entity which chooses to rely on the customer due diligence performed by another obliged entity. The obliged entity relied upon should also retain its own responsibility for compliance with AML/CFT requirements, including the requirement to report suspicious transactions and retain records.	obliged entity which chooses to rely on the customer due diligence performed by another obliged entity. The obliged entity relied upon should also retain its own responsibility for compliance with AML/CFT requirements, including the requirement to report suspicious transactions and retain records.		
(62) Obligated entities may outsource tasks relating to the performance of customer due diligence to an agent or external service provider, unless they are established in third countries that are designated as high-risk, as having compliance weaknesses or as posing a threat to the Union's	(62) Obligated entities may outsource tasks ~~relating to the performance of customer due diligence~~ to ~~an agent or external a~~ service provider, including agent, distributor and another group member , unless they are established in third countries that are designated as high-risk, as	Amendments to reflect changes of the Article on outsourcing.	HU: (Comments): According to the provision of qualitative AML/CFT regime, only limited activities should be outsourced. We support the new text on "including agent, distributor and another group member"; however, Hungary strongly request keeping the text "relating to the performance of customer due diligence". In terms of outsourcing, not only the sending of STRs, but

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financial system. In the case of agency or outsourcing relationships on a contractual basis between obliged entities and external service providers not covered by AML/CFT requirements, any AML/CFT obligations upon those agents or outsourcing service providers could arise only from the contract between the parties and not from this Regulation. Therefore, the responsibility for complying with AML/CFT requirements should remain entirely with the obliged entity itself. The obliged entity should in particular ensure that, where an outsourced service provider is involved for the purposes of remote customer	having compliance weaknesses or as posing a threat to the Union's financial system. In the case of agency or outsourcing relationships on a contractual basis between obliged entities and ~~external~~ service providers not covered by AML/CFT requirements, any AML/CFT obligations upon those ~~agents or outsourcing~~ service providers could arise only from the contract between the parties and not from this Regulation. Therefore, the responsibility for complying with AML/CFT requirements should remain entirely with the obliged entity itself. The obliged entity should in particular ensure that, where an outsourced service		also the decision to send them should not be outsourced, therefore we suggest reinserting these provisions and the corresponding text in the recital. EE: (Comments): EE Comment. We would appreciate if the text would clearly reflect that such tasks are set by the OE. FR: (Comments): <u>TRACFIN comments and proposals</u> Some outsourcing bans still apply – for example on reporting suspicious transactions or activities. As such, we would suggest specifying that only certain tasks can be outsourced. Furthermore, we suggest clarifying the ban on outsourcing suspicious transaction reports, in order to make sure that this ban cannot be circumvented by having a person within an obliged entity “rubber stamp” work done by

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identification, the risk-based approach is respected.	provider is involved for the purposes of remote customer identification, the risk-based approach is respected.		third party service providers. As such, it is necessary to clarify that the ban on outsourcing reporting obligations must apply to - The decision to file a report, - The conception and writing of the report, - The sending of the report. 62) <i>Obligated entities may outsource certain tasks relating to the performance of customer due diligence to an agent or external a service provider, including agent, distributor and another group member, unless they are established in third countries that are designated as high-risk, as having compliance weaknesses or as posing a threat to the Union's financial system. The approval of the obliged entity's policies, controls and procedures, the approval of the obliged entity's risk assessment and the reporting of suspicious transactions, activities or threshold-based declarations to the FIU should not</i>

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			<i>be outsourced under any circumstances. The reporting of suspicious activities, transactions and threshold-based declarations is understood to include the decision to file a report, the conception and writing of the report and the sending of the report.</i> ES: (Comments): ok IE: (Comments): Agreed
(63) In order for third party reliance and outsourcing relationships to function efficiently, further clarity is needed around the conditions according to which reliance takes place. AMLA should have the task of developing	(63) In order for third party reliance and outsourcing relationships to function efficiently, further clarity is needed around the conditions according to which reliance takes place. AMLA should have the task of developing		

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guidelines on the conditions under which third-party reliance and outsourcing can take place, as well as the roles and responsibilities of the respective parties. To ensure that consistent oversight of reliance and outsourcing practices is ensured throughout the Union, the guidelines should also provide clarity on how supervisors should take into account such practices and verify compliance with AML/CFT requirements when obliged entities resort to those practices.	guidelines on the conditions under which third-party reliance and outsourcing can take place, as well as the roles and responsibilities of the respective parties. To ensure that consistent oversight of reliance and outsourcing practices is ensured throughout the Union, the guidelines should also provide clarity on how supervisors should take into account such practices and verify compliance with AML/CFT requirements when obliged entities resort to those practices.		
	(63a) When outsourcing tasks deriving from requirements under this Regulation, the obliged entity remains the	Due to the modification of outsourcing is proposed to add new recital.	IT: (Comments): Please see our comments below on Art. 6a.

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	controller under Regulation (EU) 2016/679 and thus would have to ensure full compliance with the requirements of Regulation (EU) 2016/679. Outsourcing tasks to external service providers in third countries has to follow the requirements of Chapter V of Regulation (EU) 2016/679; processors from third countries would also have to designate in writing a representative in the Union (Article 27 of Regulation (EU) 2016/679). Furthermore, as this would regularly constitute processing within the meaning of Article 28 of Regulation (EU) 2016/679, a contract or other legal act would have to be		EE: (Comments): EE Comment. We are happy to see this recital. The word “external” seems to not be required here: <i>Outsourcing tasks to external service providers in third countries has to follow the requirements of Chapter V of Regulation (EU) 2016/679</i> ES: (Comments): We do agree with the amendment proposed. However, we would suggest not to identify outsourcing with external service providers, as these services can also be supplied internally within the group (as reflected in art. 6.a of the AMLR). Outsourcing tasks to external service providers in third countries has to follow the requirements of Chapter V of Regulation (EU) 2016/679 IE: (Comments):

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	concluded with the service provider. In that context, in order to ensure that the supervisory capacity of the data protection supervisory authorities is not restricted due to multiple outsourcing, service providers are not allowed to outsource the tasks mandated to them on their behalf.		Agreed
(64) The concept of beneficial ownership was introduced by Directive (EU) 2015/849 to increase transparency of complex corporate structures. The need to access accurate, up-to-date and adequate information on the beneficial owner is a key factor in	(64) The concept of beneficial ownership was introduced by Directive (EU) 2015/849 to increase transparency of complex corporate structures. The need to access accurate, up-to-date and adequate information on the beneficial owner is a key factor in		IE: (Comments): Not agreed. To include the amendments proposed could inadvertently exclude express trusts. DK: (Comments): DK:

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tracing criminals who might otherwise be able to hide their identity behind such opaque structures. Member States are currently required to ensure that both corporate and other legal entities as well as express trusts and other similar legal arrangements obtain and hold adequate, accurate and current information on their beneficial ownership. However, the degree of transparency imposed by Member States varies. The rules are subject to divergent interpretations, and this results in different methods to identify beneficial owners of a given entity or arrangement. This is due, inter alia, to inconsistent ways of calculating indirect ownership of	tracing criminals who might otherwise be able to hide their identity behind such opaque structures. Member States are currently required to ensure that both corporate and other legal entities as well as express trusts and other similar legal arrangements obtain and hold adequate, accurate and current information on their beneficial ownership. However, the degree of transparency imposed by Member States varies. The rules are subject to divergent interpretations, and this results in different methods to identify beneficial owners of a given legal entity or legal arrangement. This is due, inter alia, to inconsistent ways of calculating		Agreed. If we – in the future – want the Beneficial Ownership Register Interconnection System (BORIS) to have linkable results across borders in the EU, then we need more harmonized rules on the identification of beneficial ownership and on the concept of control.

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an entity or arrangement. This hampers the transparency that was intended to be achieved. It is therefore necessary to clarify the rules to achieve a consistent definition of beneficial owner and its application across the internal market.	indirect ownership of ~~a~~ legal entity or legal arrangement, and differences between the legal systems of the Member States. This hampers the transparency that was intended to be achieved. It is therefore necessary to clarify the rules to achieve a consistent definition of beneficial owner and its application across the internal market.		
(65) Detailed rules should be laid down to identify the beneficial owners of corporate and other legal entities and to harmonise definitions of beneficial ownership. While a specified percentage shareholding or ownership interest	(65) Detailed rules should be laid down to identify the beneficial owners of corporate and other legal entities and to harmonise definitions of beneficial ownership. ~~While a specified percentage shareholding or ownership interest~~		ES: (Comments): ok IE: (Comments): Agreed

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does not automatically determine the beneficial owners, it should be one factor among others to be taken into account. Member States should be able, however, to decide that a percentage lower than 25% may be an indication of ownership or control. Control through ownership interest of 25% plus one of the shares or voting rights or other ownership interest should be assessed on every level of ownership, meaning that this threshold should apply to every link in the ownership structure and that every link in the ownership structure and the combination of them should be properly examined.	~~does not automatically determine the beneficial owners, it should be one factor among others to be taken into account. Member States should be able, however, to decide that a percentage lower than 25% may be an indication of ownership or control. Control through ownership interest of 25% plus one of the shares or voting rights or other ownership interest should be assessed on every level of ownership, meaning that this threshold should apply to every link in the ownership structure and that every link in the ownership structure and the combination of them should be properly examined.~~		

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	Beneficial ownership is based on two components – ownership and control. While these two factors might be fulfilled at the same time, they are essentially independent of one other. It is therefore important that both factors are analysed in order to assess how control is exercised over a legal entity, and to identify all natural persons who are the beneficial owners of that legal entity.		
(66) A meaningful identification of the beneficial owners requires a determination of whether control is exercised via other means. The determination of control through an	(66) A meaningful identification of the beneficial owners requires a determination of whether control is exercised via other means. The determination of control through an	It has been brought to the Presidency's attention that the term "link" is not defined and my come across as unclear, as the manager or director itself is not considered to	FR: (Comments): We are not sure whether this calculation methodology allows to capture the case of a natural person owning 51% of a legal person which itself owns 51% of a legal

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ownership interest is necessary but not sufficient and it does not exhaust the necessary checks to determine the beneficial owners. The test on whether any natural person exercises control via other means is not a subsequent test to be performed only when it is not possible to determine an ownership interest. The two tests, namely that of control through an ownership interest and that of control via other means, should be performed in parallel. Control through other means may include the right to appoint or remove more than half of the members of the board of the corporate entity; the ability to exert a significant influence on the	ownership interest is necessary but not sufficient and it does not exhaust the necessary checks to determine the beneficial owners. The test on whether any natural person exercises control via other means is not a subsequent test to be performed only when it is not possible to determine an ownership interest. The two tests, namely that of control through an ownership interest and that of control via other means, should be performed in parallel. ~~Control through other means may include the right to appoint or remove more than half of the members of the board of the corporate entity; the ability to exert a significant influence on the~~	be a beneficial owner. Thus, there is no need for a link with its family to constitute control. This wording may put normal contacts under suspicion and therefore the Presidency suggests its deletion.	person which itself owns 51% of a legal person ... ES: (Comments): We can live with the deletion proposed as long as “ <i>control via other means</i> ” definition and its presumptions are kept in art. 42 (even if “link” is not defined in Article 42 1.B). Please note that “ <i>control via other means</i> ” goes beyond the controversies about the term link or about the non-consideration of managers/directors as BO, and therefore it is essential to define it LV: (Comments): We consider that exclusion of the last sentence cannot be supported, as it mentions several possible and non-limiting examples of how control over a legal entity can be exercised, including through family members of the board of a corporate entity

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decisions taken by the corporate entity; control through formal or informal agreements with owners, members or the corporate entities, as well as voting arrangements; links with family members of managers or directors or those owning or controlling the corporate entity; use of formal or informal nominee arrangements.	~~decisions taken by the corporate entity; control through formal or informal agreements with owners, members or the corporate entities, as well as voting arrangements; links with family members of managers or directors or those owning or controlling the corporate entity; use of formal or informal nominee arrangements.~~		IE: (Comments): Not agreed. The term “link” is widely understood. It is important that this text remains as it illustrates the concept of control. DE: (Comments): Link to family members should be deleted; it puts normal contacts under suspicion and is, with this wide scope, no practical criterion, c.f. Art. 42 No. 1 letter d): <u>Drafting suggestion:</u> (66) A meaningful identification of the beneficial owners requires a determination of whether control is exercised via other means. The determination of control through an ownership interest is necessary but not sufficient and it does not exhaust the necessary checks to determine the beneficial owners. The test on whether any natural person exercises control via other

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			means is not a subsequent test to be performed only when it is not possible to determine an ownership interest. The two tests, namely that of control through an ownership interest and that of control via other means, should be performed in parallel. Control through other means may include the right to appoint or remove more than half of the members of the board of the corporate entity; the ability to exert a significant influence on the decisions taken by the corporate entity; control through formal or informal agreements with owners, members or the corporate entities, as well as voting arrangements; ~~links with family members of managers or directors or those owning or controlling the corporate entity~~ ; use of formal or informal nominee arrangements.
	(66a) An ownership of 25% or more of the shares or voting rights or other ownership interest		NL: (Comments):

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	in general establishes the beneficial ownership of the legal entity. Ownership interest should encompass both control rights and rights that are significant in terms of receiving a benefit, as is a right to a share of profits or other internal resources or liquidation balance. There may, however, be situations where the risk that certain categories of legal entities be misused for money laundering or terrorist financing purposes are higher. In such situations, enhanced transparency measures are necessary to dissuade criminals from setting up or infiltrating these entities, either through		We refer to our comments on the chapter on beneficial ownership. We prefer to keep the 25%+1 rule, and do not see the revised R.24 being a barrier in this regard, as it allows for a maximum threshold of 25%, meaning that anything above that would constitute beneficial ownership. Also, the 25%+1 criteria should remain <i>indicative</i>, as it is under the AMLD and not a hard rule. ES: (Comments): We are in favour of taking into account the results of NRAs when setting lower thresholds. FI: (Comments): We would still prefer 10 % instead of 25 %. LV: (Comments): We support PRES proposal but PRES comment explaining the need for the proposal would

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	direct or indirect ownership or control. In order to ensure that the Union is able to adequately mitigate such varying levels of risk, it is necessary to empower the Commission to identify those categories of legal entities that should be subject to lower beneficial transparency thresholds. Such identification should be ongoing and should rely on the results of the [national and] supranational risk assessment[s] as well as on relevant analyses and reports produced by AMLA, Europol or other Union bodies that have a role in the prevention, investigation and prosecution of		certainly be useful, especially drawing attention to the fact that starting with consideration, the proportion of shares, voting rights or other forms of ownership owned by BO is changed from more than 25 per cent to at least 25 per cent IE: (Comments): We understand this recital is added to comply with revised FATF guidance. National risk assessments should be taken into account when assessing the riskiness of a sector or entity. We would also prefer if there was a requirement for consultation with MS before the Commission decides whether a threshold should be lowered for an entity. DK: (Comments): DK: We find that it is not an appropriate solution to leave it up to the Commission to make

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	money laundering and terrorist financing.		recommendations on identification and registration of beneficial owners. We have certain legal concerns in this regard, as it is not clear to the entities covered what is applicable. The BO rules should be stated clearly in AMLR and AMLD6 to secure this. The same threshold should apply to all legal entities as it will be difficult for the covered legal entities to know what threshold applies. DE: (Comments): Please refer to our comment on Art. 42 para. 4 AMLR.
	(66b) By their complex nature, multi-layered ownership and control structures make the		NL: (Comments): We refer to our comments on the chapter on beneficial ownership.

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	identification of the beneficial owners more difficult. In order to ensure a consistent approach throughout the internal market, it is necessary to clarify the rules that apply to those situations. For this purpose, it is necessary to assess not only who the natural persons who control a direct shareholder with 25% or more of the shares or voting rights or other ownership interest are, but also those who control indirectly 25% or more of the shares or voting rights or other ownership interest in the ownership chain. In this latter case, these individuals should be identified by multiplying the shares in the		DK: (Comments): DK: We agree.

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	ownership chain. To this end, all shares indirectly owned by the same natural person, or shares held by multiple legal entities or arrangement that are directly or indirectly controlled by the same natural person should be added together. Shares or voting rights held by persons acting in concert should also be added together.		
	(66c) The determination of the beneficial owner of a legal entity in situations where the shares of the legal entity are held in a legal arrangement, or where they are held by a foundation or similar legal entity, might be more difficult in view of the different		NL: (Comments): We refer to our comments on the chapter on beneficial ownership. IE: (Comments): We are unsure about this. It may not always be the case that the BO of the trust is also the BO of the company held in the trust. Could

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	nature and identification criteria of beneficial ownership between legal entities and legal arrangements. It is therefore necessary to set out clear rules to deal with these situations of multi-layered structure. In such cases, all beneficial owners of the legal arrangement or foundation should be the beneficial owners of the legal entity whose shares are held in the legal arrangement or held by the foundation.		this make it easier to hide ownership of the company? DK: (Comments): DK: We find that beneficial owners of a corporate entity covered by Article 42 should be determind based only on ownership interest or control by other means. Beneficial owners of the foundation should not per default be beneficial owners of the corporate. If a Danish corporate is 100 % owned by a Danish foundation it is our assement the benefial owners should be determined based on whether a natural person owns og control ownership interest or by other means of control. As a Danish Foundation is independent and self-governing and therefore devoid of owners, the board of directors of the foundation is considered beneficial owners of the corporate as there are no natural persons at the end of the ownership chain. A foundation will always be the

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			ultimate owner. Other natural persons are considered beneficial owners of the corporate if they can exercise control by other means, e.g. the right to appoint the majority of the members of the board.
	(66d) A common understanding of the concept of control and a more precise definition of the means of control are necessary to ensure consistent application of the rules across the internal market. Control should be understood as the effective ability to impose one's will on the corporate entity's decision-making on substantive issues. The usual mean of control is a majority share of voting rights.		ES: (Comments): We would suggest to make more clear that, apart from voting rights, there are other means of control: <i>The standard means of control is a majority share of voting rights, but beneficial ownership can also be established by control through other means without significant, or any, ownership interest</i> IE: (Comments): Agreed DK: (Comments):

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	The position of beneficial owner can also be established by control via other means without having significant, or any, ownership interest. For this reason, in order to ascertain all individuals that are the beneficial owners of a legal entity, control should be identified independently of ownership interest. Control can generally be exercised by any means, including legal and non-legal means. Without necessarily establishing the position of the beneficial owner, these means may be taken into account for assessing whether control via other means is exercised,		DK: We refer to our comment on Article 42.

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	depending on the specific situation of each legal entity.		
	(66e) Indirect ownership or control may be mediated by multiple links in a chain or by multiple individual or interlinked chains. A link in a chain may be any person or organisation or a legal arrangement without legal personality. The relations between the links may consist of ownership interest or voting rights or other means of control.		IE: (Comments): Agreed
(67) In order to ensure effective transparency, the widest possible range of legal entities and arrangements incorporated or	(67) In order to ensure effective transparency, the widest possible range of legal entities and arrangements incorporated or		NL: (Comments): We refer to our comments on the chapter on beneficial ownership. In our view their should be room to

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created in the territory of Member States should be covered by beneficial ownership rules. This includes legal entities other than corporate ones and arrangements similar to trusts. Due to differences in the legal systems of Member States, those broad categories encompass a variety of different organisational structures. Member States should notify to the Commission a list of the types of corporate and other legal entities where the beneficial owners is identified in line with the rules for the identification of beneficial owners for corporate entities. The Commission should make recommendations to Member States	created in the territory of Member States should be covered by beneficial ownership rules. This includes legal entities other than corporate ones and arrangements similar to trusts. Due to differences in the legal systems of Member States, those broad categories encompass a variety of different organisational structures. Member States should notify to the Commission a list of the types of corporate and other legal entities where the beneficial owners is identified in line with the rules for the identification of beneficial owners for corporate entities. ~~The Commission should make recommendations to Member States~~		exclude certain types of legal entities from registration in the BO-register, if they inherently, due to their limited legal nature, pose little to no ML/TF-risk. IE: (Comments): For consistency of terminology, the phrase “ express trusts ” should be used instead of just “trusts”

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on the specific rules and criteria to identify the beneficial owners of legal entities other than corporate entities.	~~on the specific rules and criteria to identify the beneficial owners of legal entities other than corporate entities.~~		
	(67a) The specific nature of certain legal entities, such as for example associations, trade unions, political parties or churches, does not lend them a meaningful identification of beneficial owners based of ownership interests or membership. In those cases, however, it may be the case that the senior managing officials exercise control over the legal entity through other means. In		IE: (Comments): Not agreed. This is creating a difference of treatment between legal entities and express trusts. In the case of express trusts, we are proposing that Article 43a will allow a class of beneficiary to be registered. DK: (Comments): DK: We find that only CDD should apply to certain low risk legal entities such as non-profit associations. We refer to our comments on Article 43c and Article 45(1) regarding Member States power to exempt certain legal entities.

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	those cases, they should be reported as the beneficial owners.		If however, non-profit associations are covered by this Chapter we find that the recital is not reflected in any of the Articles allowing for such entities only to register the senior management. We find that such registration of management should not be seen as control by other means, but a registration due to the fact that the management has the decision-making power. Article 42 of this compromise text will apply to corporates and Article 42a will apply to legal entities similar to trusts such as foundations. Article 43 c allows for the registration of class only. LT: (Comments): It should be aligned with final decision, whether senior management will be reported in BOR as BO or as a separate category.

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(68) To ensure the consistent identification of beneficial owners of express trusts and similar legal entities, such as foundations, or arrangements, it is necessary to lay down harmonised beneficial ownership rules. Member States are required to notify to the Commission a list of the types of legal entities and legal arrangements similar to express trusts where the beneficial owners is identified according to the identification of beneficial owners for express trusts and similar legal entities or arrangements. The Commission should be empowered to adopt, by means of an implementing act, a list of legal	(68) To ensure the consistent identification of beneficial owners of express trusts and similar legal entities, such as foundations, or arrangements, it is necessary to lay down harmonised beneficial ownership rules. Member States are required to notify to the Commission a list of the types of legal entities and legal arrangements similar to express trusts where the beneficial owners is identified according to the identification of beneficial owners for express trusts and similar legal entities or arrangements. ~~The Commission should be empowered to adopt, by means of an implementing act, a list of legal~~		IE: (Comments): We do not support this deletion as this could result in similar legal entities not being captured in some MS. To ensure even application of the rules, the Commission should publish a list of similar legal arrangements. As Ireland is a common law country we must undertake this burden. Trusts are extensively used in the country. There must be a level playing field between all MS to ensure there are no loopholes in the legislation. DE: (Comments): We welcome the drafting proposal.

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arrangements and legal entities governed by national law of Member States, which have a structure or function similar to express trusts.	~~arrangements and legal entities governed by national law of Member States, which have a structure or function similar to express trusts.~~		
	(68a) Directive 2004/109/EC introduced strict transparency requirements for companies whose securities are admitted to trading on a regulated market. In certain circumstances, those transparency requirements can achieve an equivalent transparency regime to the beneficial ownership transparency rules set out in this Regulation. This is the case when the control over the company is		IE: (Comments): Does this Directive comply with the revised FATF rules for listed companies? DK: (Comments): DK: It does not make sense to include some companies whose securities are admitted to trading on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

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	exercised through voting rights, and the ownership structure of the company only includes natural persons. In those circumstances, there is no need to apply beneficial ownership requirements to those companies		We prefer to exempt all companies whose securities are admitted to trading on a regulated market as today according to the current AMLD. We refer to our comments on Article 43c. DK drafting: ~~(68a) Directive 2004/109/EC introduced strict transparency requirements for companies whose securities are admitted to trading on a regulated market. In certain circumstances, those transparency requirements can achieve an equivalent transparency regime to the beneficial ownership transparency rules set out in this Regulation. This is the case when the control over the company is exercised through voting rights, and the ownership structure of the company only includes natural persons. In those circumstances, there is no need to apply beneficial ownership requirements to those companies~~

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(69) A consistent approach to the beneficial ownership transparency regime also requires ensuring that the same information is collected on beneficial owners across the internal market. It is appropriate to introduce precise requirements concerning the information that should be collected in each case. That information includes a minimum set of personal data of the beneficial owner, the nature and extent of the beneficial interest held in the legal entity or legal arrangement and information on the legal entity or legal arrangement.	(69) A consistent approach to the beneficial ownership transparency regime also requires ensuring that the same information is collected on beneficial owners across the internal market. It is appropriate to introduce precise requirements concerning the information that should be collected in each case. That information includes a minimum set of personal data of the beneficial owner, the nature and extent of the beneficial interest held in the legal entity or legal arrangement and information on the legal entity or legal arrangement-, which are necessary to ensure the appropriate identification of the		ES: (Comments): ok IE: (Comments): Agreed

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	natural person who is the beneficial owner and the reasons why that natural person has been identified as the beneficial owner.		
	(69b) When legal entities and legal arrangements are part of a complex structure, clarity on their ownership or control structure is critical in order to ascertain who their beneficial owners are. To this end, it is important that legal entities and legal arrangements clearly understand the relationships by which they are indirectly owned or controlled, including all those intermediary steps between the beneficial owners and the legal		DK: (Comments): DK: We refer to our comments to Article 44.

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	entity or legal arrangement itself, whether these are in the form of other legal entities and legal arrangements or of nominee relationships. Identification of the ownership and control structure allows to identify the ways by which ownership is established or control can be exercised over a legal entity and is therefore essential for a comprehensive understanding of the position of the beneficial owner. The beneficial owner information should therefore always include a description of the relationship structure.		

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(70) Underpinning an effective framework on beneficial ownership transparency is the knowledge by corporate and other legal entities of the natural persons who are their beneficial owners. Thus, all corporate and other legal entities in the Union should obtain and hold adequate, accurate and current beneficial ownership information. That information should be retained for five years and the identity of the person responsible for retaining the information should be reported to the registers. That retention period is equivalent to the period for retention of the information obtained within the application of AML/CFT requirements, such as	(70) Underpinning an effective framework on beneficial ownership transparency is the knowledge by corporate and other legal entities of the natural persons who are their beneficial owners. Thus, all corporate and other legal entities in the Union should obtain and hold adequate, accurate and current beneficial ownership information. That information should be retained for five years and the identity of the person responsible for retaining the information should be reported to the registers. That retention period is equivalent to the period for retention of the information obtained within the application of AML/CFT requirements, such as		DK: (Comments): DK: We refer to our comments on Article 45(5). DK drafting: (70) Underpinning an effective framework on beneficial ownership transparency is the knowledge by corporate and other legal entities of the natural persons who are their beneficial owners. Thus, all corporate and other legal entities in the Union should obtain and hold adequate, accurate and current beneficial ownership information. That information should be retained for five years ~~and the identity of the person responsible for retaining the information should be reported to the registers.~~ That retention period is equivalent to the period for retention of the information obtained within the application of AML/CFT requirements, such as customer due diligence measures. In order to ensure the possibility to

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customer due diligence measures. In order to ensure the possibility to cross-check and verify information, for instance through the mechanism of discrepancy reporting, it is justified to ensure that the relevant data retention periods are aligned.	customer due diligence measures. In order to ensure the possibility to cross-check and verify information, for instance through the mechanism of discrepancy reporting, it is justified to ensure that the relevant data retention periods are aligned.		cross-check and verify information, for instance through the mechanism of discrepancy reporting, it is justified to ensure that the relevant data retention periods are aligned.
(71) Corporate and other legal entities should take all necessary measures to identify their beneficial owners. There may however be cases where no natural person is identifiable who ultimately owns or exerts control over an entity. In such exceptional cases, provided that all means of identification are exhausted, the senior managing officials can be reported when	(71) Corporate and other legal entities should take all necessary measures to identify their beneficial owners. There may however be cases where no natural person is identifiable who ultimately owns or exerts control over an entity. In such exceptional cases, provided that all means of identification are exhausted, the senior managing officials can be reported when		NL: (Comments): We refer to our comments on the chapter on beneficial ownership. We are not in favor of legal entities having to register the justificaiton in the BO-register, as it is mostly low risk legal entities that often end up identifying senior management as psuedo-BO's. These are often less professional and less wel funded, and thus this would create an additional administrative burden. The risk-based element introduced in this recital helps in

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providing beneficial ownership information to obliged entities in the course of the customer due diligence process or when submitting the information to the central register. Corporate and legal entities should keep records of the actions taken in order to identify their beneficial owners, especially when they rely on this last resort measure, which should be duly justified and documented.	providing beneficial ownership information to obliged entities in the course of the customer due diligence process or when submitting the information to the central register. Corporate and legal entities should keep records of the actions taken in order to identify their beneficial owners, especially when they rely on this last resort measure, which should be duly justified and documented. However, concerns about the difficulty in obtaining the information should not be a valid reason to avoid the identification effort and resort to reporting the senior management instead. Therefore, legal entities should		this regard, but does not alleviate the problem entirely.

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	always be able to substantiate their doubts as to the veracity of the information collected. Such justification should be proportionate to the risk of the legal entity and the complexity of its ownership structure.		
(72) There is a need to ensure a level playing field among the different types of legal forms and to avoid the misuse of trusts and legal arrangements, which are often layered in complex structures to further obscure beneficial ownership. Trustees of any express trust administered in a Member State should thus be responsible for obtaining and holding adequate,	(72) There is a need to ensure a level playing field among the different types of legal forms and to avoid the misuse of trusts and legal arrangements, which are often layered in complex structures to further obscure beneficial ownership. Trustees of any express trust administered or residing in a Member State should thus be responsible for obtaining and		IE: (Comments): Where “trust” is mentioned, it should be replaced with “express trust” for consistency of terminology.

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accurate and current beneficial ownership information regarding the trust, and for disclosing their status and providing this information to obliged entities carrying out costumer due diligence. Any other beneficial owner of the trust should assist the trustee in obtaining such information.	holding adequate, accurate and current beneficial ownership information regarding the trust, and for disclosing their status and providing this information to obliged entities carrying out costumer due diligence. Any other beneficial owner of the trust should assist the trustee in obtaining such information.		
(73) In view of the specific structure of certain legal entities such as foundations, and the need to ensure sufficient transparency about their beneficial ownership, such entities and legal arrangements similar to trusts should be subject to equivalent	(73) In view of the specific structure of certain legal entities ~~such as~~ foundations arrangements , and the need to ensure sufficient transparency about their beneficial ownership, such ~~entities and~~ legal arrangements similar to trusts should be subject to equivalent		NL: (Comments): We would propose to delete the word 'foundations' here (which seems to have been the intent). As foundations cannot be considered similar legal arrangements in all jurisdictions, such as NL. (73) In view of the specific structure of certain legal entities

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beneficial ownership requirements as those that apply to express trusts.	beneficial ownership requirements as those that apply to express trusts.		~~such as foundations~~ arrangements, and the need to ensure sufficient transparency about their beneficial ownership, such ~~entities and~~ legal arrangements similar to trusts should be subject to equivalent beneficial ownership requirements as those that apply to express trusts ES: (Comments): We believe that both 1) entities, such as foundations, and 2) legal arrangements should be mentioned In this regard, we would suggest for consideration a new wording: <i>Given the need to ensure sufficient transparency on the beneficial ownership of certain entities with a specific structure, such as foundations, as well as of legal arrangements similar to trusts, such entities and legal arrangements should be subject to beneficial ownership requirements equivalent to those that apply to express trust</i> IE:

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			(Comments): Similar to Recital 68 , this narrows the definition too much and could result in some entities that are similar in structure or function to express trusts not being captured. Again, it should refer to “express trust”, not just “trust”. DK: (Comments): DK: The wording needs to be clarified. DE: (Comments): We understand that the intention was to delete “entities such as foundations”. The word “foundations” should therefore also be deleted here.
(74) Nominee arrangements may allow the concealment of the identity of the beneficial owners,	(74) Nominee arrangements may allow the concealment of the identity of the beneficial owners,		DE: (Comments): Members of, e.g. the supervisory or advisory board, would be burdened

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because a nominee might act as the director or shareholder of a legal entity while the nominator is not always disclosed. Those arrangements might obscure the beneficial ownership and control structure, when beneficial owners do not wish to disclose their identity or role within them. There is thus a need to introduce transparency requirements in order to avoid that these arrangements are misused and to prevent criminals from hiding behind persons acting on their behalf. Nominee shareholders and nominee directors of corporate or other legal entities should maintain sufficient information on the identity of their	because a nominee might act as the director or shareholder of a legal entity while the nominator is not always disclosed. Those arrangements might obscure the beneficial ownership and control structure, when beneficial owners do not wish to disclose their identity or role within them. There is thus a need to introduce transparency requirements in order to avoid that these arrangements are misused and to prevent criminals from hiding behind persons acting on their behalf. Nominee shareholders and nominee directors of corporate or other legal entities should maintain sufficient information on the identity of their		with an extraordinary obligation, for which they may have no resources to fulfil such obligation. Rather, such a duty can only be imposed on members of the executive board or governing body. The drafting suggestion is to specify the duty on the latter. <u>Drafting suggestion:</u> (74) Nominee arrangements may allow the concealment of the identity of the beneficial owners, because a nominee might act as the director or shareholder of a legal entity while the nominator is not always disclosed. Those arrangements might obscure the beneficial ownership and control structure, when beneficial owners do not wish to disclose their identity or role within them. There is thus a need to introduce transparency requirements in order to avoid that these arrangements are misused and to prevent criminals from hiding behind persons acting on their behalf. Nominee shareholders and nominee

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nominator as well as of any beneficial owner of the nominator and disclose them as well as their status to the corporate or other legal entities. The same information should also be reported by corporate and other legal entities to obliged entities, when customer due diligence measures are performed.	nominator as well as of any beneficial owner of the nominator and disclose them as well as their status to the corporate or other legal entities. The same information should also be reported by corporate and other legal entities to obliged entities, when customer due diligence measures are performed.		executive directors of corporate or other legal entities should maintain sufficient information on the identity of their nominator as well as of any beneficial owner of the nominator and disclose them as well as their status to the corporate or other legal entities. The same information should also be reported by corporate and other legal entities to obliged entities, when customer due diligence measures are performed.
(75) The risks posed by foreign corporate entities and legal arrangements, which are misused to channel proceeds of funds into the Union's financial system, need to be mitigated. Since beneficial ownership standards in place in third countries might not be sufficient to allow for the same	(75) The risks posed by foreign corporate entities and legal arrangements, which are misused to channel proceeds of funds into the Union's financial system, need to be mitigated. Since beneficial ownership standards in place in third countries might not be sufficient to allow for the same		

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level of transparency and timely availability of beneficial ownership information as in the Union, there is a need to ensure adequate means to identify the beneficial owners of foreign corporate entities or legal arrangements in specific circumstances. Therefore, legal entities incorporated outside the Union and express trusts or similar legal arrangements administered outside the Union should be required to disclose their beneficial owners whenever they operate in the Union by entering into a business relationship with a Union's obliged entity or by acquiring real estate in the Union.	level of transparency and timely availability of beneficial ownership information as in the Union, there is a need to ensure adequate means to identify the beneficial owners of foreign corporate entities or legal arrangements in specific circumstances. Therefore, legal entities incorporated outside the Union and express trusts or similar legal arrangements administered outside the Union should be required to disclose their beneficial owners whenever they operate in the Union by entering into a business relationship with a Union's obliged entity or by acquiring real estate in the Union, as well as when they are awarded		

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	a public procurement for goods, services or concessions.		
(76) In order to encourage compliance and ensure an effective beneficial ownership transparency, beneficial ownership requirements need to be enforced. To this end, Member States should apply sanctions for breaches of those requirements. Those sanctions should be effective, proportionate and dissuasive, and should not go beyond what is required to encourage compliance. Sanctions introduced by Member States should have an equivalent deterrent effect across the Union on the	(76) In order to encourage compliance and ensure an effective beneficial ownership transparency, beneficial ownership requirements need to be enforced. To this end, Member States should apply sanctions for breaches of those requirements. Those sanctions should be effective, proportionate and dissuasive, and should not go beyond what is required to encourage compliance. Sanctions introduced by Member States should have an equivalent deterrent effect across the Union on the		

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breaches of beneficial ownership requirements.	breaches of beneficial ownership requirements.		
(77) Suspicious transactions, including attempted transactions, and other information relevant to money laundering, its predicate offences and terrorist financing, should be reported to the FIU, which should serve as a single central national unit for receiving and, analysing reported suspicions and for disseminating to the competent authorities the results of its analyses. All suspicious transactions, including attempted transactions, should be reported, regardless of the amount of the transaction. Reported information	(77) Suspicious transactions, including attempted transactions, and other information relevant to money laundering, its predicate offences and terrorist financing, should be reported to the FIU, which should serve as a single central national unit for receiving and, analysing reported suspicions and for disseminating to the competent authorities the results of its analyses. All suspicious transactions, including attempted transactions, should be reported, regardless of the amount of the transaction. Reported information		FR: (Comments): The following amendments explain the approach suggested for Article 50 AMLR. Please refer to comments and arguments provided under that Article. <i>Recital 77</i> Obligated entities should promptly report to the FIU all suspicious funds, transactions or activities, including attempted transactions or activities, and other information relevant to money laundering; ~~its predicate offences and~~ or terrorist financing, regardless of amount. When reporting on a suspicion of money laundering, obligated entities should also report, where applicable, on the underlying predicate offence. Furthermore, in order to help prevent the

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may also include threshold-based information. The disclosure of information to the FIU in good faith by an obliged entity or by an employee or director of such an entity should not constitute a breach of any restriction on disclosure of information and should not involve the obliged entity or its directors or employees in liability of any kind.	may also include threshold-based information. The disclosure of information to the FIU in good faith by an obliged entity or by an employee or director of such an entity should not constitute a breach of any restriction on disclosure of information and should not involve the obliged entity or its directors or employees in liability of any kind.		<i>laundering of future proceeds of crime, including particularly serious offences mentioned in Article 83(1) TFUE, obliged entities should report to the FIU all funds, transactions and activities, included attempted transactions and activities, related to the commission of offences that have the potential to generate proceeds. In order to avoid the unnecessary reporting of low impact, isolated offences, Member States should be able to restrict the scope of such reporting obligations in cases of duly justified low risk. The Commission and the AMLA should be notified of such instances, and evaluate whether the restriction envisaged is adequate to the level of risk identified. ~~should be reported to the FIU, which~~ The FIU should serve as a single central national unit for receiving and, analysing reported suspicions and for disseminating to the competent authorities the results of its analyses. ~~All suspicious~~</i>

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			<i>~~transactions, including attempted transactions, should be reported, regardless of the amount of the transaction. Reported information~~</i> <i>Reporting obligations may also include threshold-based reporting or systematic reporting of unusual transactions or activities. The disclosure of information to the FIU in good faith by an obliged entity or by an employee or director of such an entity should not constitute a breach of any restriction on disclosure of information and should not involve the obliged entity or its directors or employees in liability of any kind.</i>
(78) Differences in suspicious transaction reporting obligations between Member States may exacerbate the difficulties in AML/CFT compliance experienced by obliged entities that have a cross-border presence or	(78) Differences in suspicious transaction reporting obligations between Member States may exacerbate the difficulties in AML/CFT compliance experienced by obliged entities that have a cross-border presence or		FR: (Comments): In order to fit the domestic contexts in the different MSs, reporting obligations should remain flexible. Instead of a “one-size fits all” template, it is suggested that a minimum set of data is included in

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operations. Moreover, the structure and content of the suspicious transaction reports have an impact on the FIU's capacity to carry out analysis and on the nature of that analysis, and also affects FIUs' abilities to cooperate and to exchange information. In order to facilitate obliged entities' compliance with their reporting obligations and allow for a more effective functioning of FIUs' analytical activities and cooperation, AMLA should develop draft regulatory standards specifying a common template for the reporting of suspicious transactions to be used as a uniform basis throughout the Union.	operations. Moreover, the structure and content of the suspicious transaction reports have an impact on the FIU's capacity to carry out analysis and on the nature of that analysis, and also affects FIUs' abilities to cooperate and to exchange information. In order to facilitate obliged entities' compliance with their reporting obligations and allow for a more effective functioning of FIUs' analytical activities and cooperation, AMLA should develop draft regulatory standards specifying a common template for the reporting of suspicious transactions to be used as a uniform basis throughout the Union.		STRs. That would meet the objective to set the necessary standards of quality and diligence, with the aim of improving international cooperation between FIUs, without creating difficulties through a rigid form that may not be adapted to different jurisdictions. As follows : <u>TRACFIN Comments and proposal</u> In order to fit the domestic contexts in the different MSs, reporting obligations should remain flexible. Instead of a “one-size fits all” template, it is suggested that a minimum set of data is included in STRs. That would meet the objective to set the necessary standards of quality and diligence, with the aim of improving international cooperation between FIUs, without creating difficulties through a rigid form that may not be adapted to different jurisdictions. As follows :

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

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(79) FIUs should be able to obtain swiftly from any obliged entity all the necessary information relating to their functions. Their unfettered and swift access to information is essential to ensure that flows of money can be properly traced and illicit networks and flows detected at an early stage. The need for FIUs to obtain additional information from obliged entities based on a suspicion of money laundering or financing of terrorism might be triggered by a prior suspicious transaction report reported to the FIU, but might also be triggered through other means such as the FIU's own analysis,	(79) FIUs should be able to obtain swiftly from any obliged entity all the necessary information relating to their functions. Their unfettered and swift access to information is essential to ensure that flows of money can be properly traced and illicit networks and flows detected at an early stage. The need for FIUs to obtain additional information from obliged entities based on a suspicion of money laundering or financing of terrorism might be triggered by a prior suspicious transaction report reported to the FIU, but might also be triggered through other means such as the FIU's own analysis,		FR: (Comments): See proposal on Article 50 - a flexible deadline, left to the decision of the FIU, is favoured. This is the best way to account for the varying levels of urgency and complexity of cases. DE: (Comments): Drafting suggestion: "The need for FIUs to obtain additional information from obliged entities based on a suspicion of money laundering, its predicate offences or financing of terrorism might be triggered by a prior suspicious transaction report reported to the FIU, but might also be triggered through other means such as the FIU's own analysis, intelligence provided by competent authorities or information held by another FIU."

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intelligence provided by competent authorities or information held by another FIU. FIUs should therefore be able, in the context of their functions, to obtain information from any obliged entity, even without a prior report being made. Obligated entities should reply to a request for information by the FIU as soon as possible and, in any case, within five days of receipt of the request. In justified and urgent cases, the obliged entity should be able to respond to the FIU's request within 24 hours. This does not include indiscriminate requests for information to the obliged entities in the context of the FIU's analysis, but only information requests based	intelligence provided by competent authorities or information held by another FIU. FIUs should therefore be able, in the context of their functions, to obtain information from any obliged entity, even without a prior report being made. Obligated entities should reply to a request for information by the FIU as soon as possible and, in any case, within five days of receipt of the request. In justified and urgent cases, the obliged entity should be able to respond to the FIU's request within 24 hours. This does not include indiscriminate requests for information to the obliged entities in the context of the FIU's analysis, but only information requests based		

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on sufficiently defined conditions. An FIU should also be able to obtain such information on a request made by another Union FIU and to exchange the information with the requesting FIU.	on sufficiently defined conditions. An FIU should also be able to obtain such information on a request made by another Union FIU and to exchange the information with the requesting FIU.		
(80) For certain obliged entities, Member States should have the possibility to designate an appropriate self-regulatory body to be informed in the first instance instead of the FIU. In accordance with the case-law of the European Court of Human Rights, a system of first instance reporting to a self-regulatory body constitutes an important safeguard for upholding the protection of fundamental rights	(80) For certain obliged entities, Member States should have the possibility to designate an appropriate self-regulatory body to be informed in the first instance instead of the FIU. In accordance with the case-law of the European Court of Human Rights, a system of first instance reporting to a self-regulatory body constitutes an important safeguard for upholding the protection of fundamental rights		

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as concerns the reporting obligations applicable to lawyers. Member States should provide for the means and manner by which to achieve the protection of professional secrecy, confidentiality and privacy.	as concerns the reporting obligations applicable to lawyers. Member States should provide for the means and manner by which to achieve the protection of professional secrecy, confidentiality and privacy.		
(81) Where a Member State decides to designate such a self-regulatory body, it may allow or require that body not to transmit to the FIU any information obtained from persons represented by that body where such information has been received from, or obtained on, one of their clients, in the course of ascertaining the legal position of their client, or in performing their	(81) Where a Member State decides to designate such a self-regulatory body, it may allow or require that body not to transmit to the FIU or to AMLA any information obtained from persons represented by that body where such information has been received from, or obtained on, one of their clients, in the course of ascertaining the legal position of their client, or	The Presidency believes that this provision shall also include the supervisory authorities that have under certain circumstances access to protected information and therefore require the same level of protection. Moreover, the scope of this provision should include not only the FIU but also AMLA, as there is no necessity for AMLA to access	FI: (Comments): We support the changes, which take into consideration legal privilege better than the original proposal. IE: (Comments): It is unclear why AMLA has been included. They will not be regulating these entities DE: (Comments):

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task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings, whether such information is received or obtained before, during or after such proceedings.	in performing their task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings, whether such information is received or obtained before, during or after such proceedings. Other supervisory authorities may as well be allowed or required not to transmit to the FIU or AMLA any information falling under the legal privilege.	such protected data in performing its duties.	GER supports the additions proposed by CZE PCY since they take into account our previous comments concerning Recital 81.
(82) Obligated entities should exceptionally be able to carry out suspicious transactions before informing the competent authorities	(82) Obligated entities should exceptionally be able to carry out suspicious transactions before informing the ~~competent authorities~~	The reference to “competent authorities” is not in consistency with <i>Recital (77) Suspicious transactions, including attempted</i>	ES: (Comments): ok IE:

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where refraining from doing so is impossible or likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation. However, this exception should not be invoked in relation to transactions concerned by the international obligations accepted by the Member States to freeze without delay funds or other assets of terrorists, terrorist organisations or those who finance terrorism, in accordance with the relevant United Nations Security Council resolutions.	FIU where refraining from doing so is impossible or likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation. However, this exception should not be invoked in relation to transactions concerned by the international obligations accepted by the Member States to freeze without delay funds or other assets of terrorists, terrorist organisations or those who finance terrorism, in accordance with the relevant United Nations Security Council resolutions.	<i>transactions, and other information relevant to money laundering, its predicate offences and financing, should be reported to the FIU, which should serve as a single central national unit for receiving and, analysing reported suspicions and for disseminating to the competent authorities the results of its analyses. The Presidency therefore suggests it to be replaced with the term “the FIU”.</i>	(Comments): Not agreed. Suggest saying “competent authorities or FIU, as appropriate”
(83) Confidentiality in relation to the reporting of suspicious	(83) Confidentiality in relation to the reporting of suspicious		BE: (Comments):

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transactions and to the provision of other relevant information to FIUs is essential in order to enable the competent authorities to freeze and seize assets potentially linked to money laundering, its predicate offences or terrorist financing. A suspicious transaction is not an indication of criminal activity. Disclosing that a suspicion has been reported may tarnish the reputation of the persons involved in the transaction and jeopardise the performance of analyses and investigations. Therefore, obliged entities and their directors and employees should not inform the customer concerned or a third party that information is being, will be,	transactions and to the provision of other relevant information to FIUs is essential in order to enable the competent authorities to freeze and seize assets potentially linked to money laundering, its predicate offences or terrorist financing. A suspicious transaction is not an indication of criminal activity. Disclosing that a suspicion has been reported may tarnish the reputation of the persons involved in the transaction and jeopardise the performance of analyses and investigations. Therefore, obliged entities and their directors and employees should not inform the customer concerned or a third party that information is being, will be,		Include the words “or persons in a comparable position, including agents and distributors” after the word “employees in the following sentence : “Therefore, obliged entities and their directors and employees, or persons in a comparable position, including agents and distributors should not inform the customer concerned or a third party that information is being, will be, or has been submitted to the FIU, whether directly or through the self-regulatory body, or that a money laundering or terrorist financing analysis is being, or may be, carried out.

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or has been submitted to the FIU, whether directly or through the self-regulatory body, or that a money laundering or terrorist financing analysis is being, or may be, carried out. The prohibition of disclosure should not apply in specific circumstances concerning, for example, disclosures to competent authorities and self-regulatory bodies when performing supervisory functions, or disclosures for law enforcement purposes or when the disclosures take place between obliged entities that belong to the same group.	or has been submitted to the FIU, whether directly or through the self-regulatory body, or that a money laundering or terrorist financing analysis is being, or may be, carried out. The prohibition of disclosure should not apply in specific circumstances concerning, for example, disclosures to competent authorities and self-regulatory bodies when performing supervisory functions, or disclosures for law enforcement purposes or when the disclosures take place between obliged entities that belong to the same group.		
(84) Criminals move illicit proceeds through numerous	(84) Criminals move illicit proceeds through numerous	To further underline the importance of the applicable data protection	IE: (Comments):

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intermediaries to avoid detection. Therefore it is important to allow obliged entities to exchange information not only between group members, but also in certain cases between credit and financial institutions and other entities that operate within networks, with due regard to data protection rules.	intermediaries to avoid detection. Therefore it is important to allow obliged entities to exchange information not only between group members, but also in certain cases between credit and financial institutions and other entities that operate within networks, ~~with due regard to~~ in full compliance with data protection rules.	regime, the Presidency suggests a stronger wording to ensure a full compatibility with the following recital 85.	Agreed
(85) Regulation (EU) 2016/679 of the European Parliament and of the Council ³⁵ applies to the processing of personal data for the purposes of this Regulation. The	(85) Regulation (EU) 2016/679 of the European Parliament and of the Council ³⁶ applies to the processing of personal data for the purposes of this Regulation. The		AT: (Comments): The application of the Regulation 2016/679 to the processing of personal data for the purposes of this Regulation should be regulated in the normative part of the

³⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

³⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

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fight against money laundering and terrorist financing is recognised as an important public interest ground by all Member States.	fight against money laundering and terrorist financing is recognised as an important public interest ground by all Member States.		Regulation and not only in the recitals. FR: (Comments): For legal clarity and consistency, GDPR should apply to obliged entities and some competent authorities. However, FIUs are authorities with investigative powers and functions, essential to the prevention and detection of ML, TF and predicate offences. They are constantly in contact with law enforcement authorities. As such, they can be considered competent authorities under Directive 2016/680, on the basis of the prevention and detection of criminal offences. Furthermore, the activities of some FIUs are relevant to national security and defense matters – which, pursuant to article 4 TEU, should remain in Member States' hands. FIUs generally operate under a very high level of confidentiality. As such, Member States should be able to apply Directive 2016/680 or

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			relevant national legislation where appropriate, to the processing of data by their FIU. (85) <i>Regulation (EU) 2016/679 of the European Parliament and of the Council³⁷ applies to the processing of personal data for the purposes of this Regulation. The fight against money laundering and terrorist financing is recognised as an important public interest ground by all Member States.</i> Member States may apply Directive 2016/680, as well as national law where appropriate, to the processing of data by their FIU, based on the sensitive nature of their activities and their relevance to national security.
(86) It is essential that the alignment of the AML/CFT	(86) It is essential that the alignment of the AML/CFT	The words “unusual and” were pointed out to be redundant in this	

³⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

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framework with the revised FATF Recommendations is carried out in full compliance with Union law, in particular as regards Union data protection law and the protection of fundamental rights as enshrined in the Charter. Certain aspects of the implementation of the AML/CFT framework involve the collection, analysis, storage and sharing of data. Such processing of personal data should be permitted, while fully respecting fundamental rights, only for the purposes laid down in this Regulation, and for carrying out customer due diligence, ongoing monitoring, analysis and reporting of unusual and suspicious transactions, identification of the	framework with the revised FATF Recommendations is carried out in full compliance with Union law, in particular as regards Union data protection law and the protection of fundamental rights as enshrined in the Charter. Certain aspects of the implementation of the AML/CFT framework involve the collection, analysis, storage and sharing of data. Such processing of personal data should be permitted, while fully respecting fundamental rights, only for the purposes laid down in this Regulation, and for carrying out customer due diligence, ongoing monitoring, analysis and reporting of ~~unusual and~~ suspicious transactions, identification of the	case, as reporting obligations only refer to suspicious transactions, not to unusual transactions. The Presidency therefore suggests their deletion.	

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beneficial owner of a legal person or legal arrangement, identification of a politically exposed person and sharing of information by credit institutions and financial institutions and other obliged entities. The collection and subsequent processing of personal data by obliged entities should be limited to what is necessary for the purpose of complying with AML/CFT requirements and personal data should not be further processed in a way that is incompatible with that purpose. In particular, further processing of personal data for commercial purposes should be strictly prohibited.	beneficial owner of a legal person or legal arrangement, identification of a politically exposed person and sharing of information by credit institutions and financial institutions and other obliged entities. The collection and subsequent processing of personal data by obliged entities should be limited to what is necessary for the purpose of complying with AML/CFT requirements and personal data should not be further processed in a way that is incompatible with that purpose. In particular, further processing of personal data for commercial purposes should be strictly prohibited.		

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(87) The revised FATF Recommendations demonstrate that, in order to be able to cooperate fully and comply swiftly with information requests from competent authorities for the purposes of the prevention, detection or investigation of money laundering and terrorist financing, obliged entities should maintain, for at least five years, the necessary information obtained through customer due diligence measures and the records on transactions. In order to avoid different approaches and in order to fulfil the requirements relating to the protection of personal data and	(87) The revised FATF Recommendations demonstrate that, in order to be able to cooperate fully and comply swiftly with information requests from competent authorities for the purposes of the prevention, detection or investigation of money laundering and terrorist financing, obliged entities should maintain, for at least five years, the necessary information obtained through customer due diligence measures and the records on transactions. In order to avoid different approaches and in order to fulfil the requirements relating to the protection of personal data and		

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legal certainty, that retention period should be fixed at five years after the end of a business relationship or an occasional transaction.	legal certainty, that retention period should be fixed at five years after the end of a business relationship or an occasional transaction.		
(88) When the notion of competent authorities refers to investigating and prosecuting authorities, it shall be interpreted as including the central and decentralised levels of the European Public Prosecutor's Office (EPPO) with regard to the Member States that participate in the enhanced cooperation on the establishment of the EPPO.	(88) When the notion of competent authorities refers to investigating and prosecuting authorities, it shall be interpreted as including ~~the central and decentralised levels of~~ the European Public Prosecutor's Office (EPPO) with regard to the Member States that participate in the enhanced cooperation on the establishment of the EPPO.	As the EPPO is an indivisible Union body operating as one single Office according to Article 8(1) Regulation 2017/1939, the addition of the words “central and decentralised level” seems redundant in this context and the Presidency therefore suggests their deletion.	IE: (Comments): Agreed
(89) For the purpose of ensuring the appropriate and efficient	(89) For the purpose of ensuring the appropriate and efficient		NL: (Comments):

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administration of justice during the period between the entry into force and application of this Regulation, and in order to allow for its smooth interaction with national procedural law, information and documents pertinent to ongoing legal proceedings for the purpose of the prevention, detection or investigation of possible money laundering or terrorist financing, which have been pending in the Member States on the date of entry into force of this Regulation, should be retained for a period of five years after that date, and it should be possible to extend that period for a further five years.	administration of justice during the period between the entry into force and application of this Regulation, and in order to allow for its smooth interaction with national procedural law, information and documents pertinent to ongoing legal proceedings for the purpose of the prevention, detection or investigation of possible money laundering or terrorist financing, which have been pending in the Member States on the date of entry into force of this Regulation, should be retained for a period of five years after that date, and it should be possible to extend that period for a further five years.		Identification of legal arrangements similar to express trusts governed by the national laws of Member States, should be done based on notifications made by the Member States.

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(90) The rights of access to data by the data subject are applicable to the personal data processed for the purpose of this Regulation. However, access by the data subject to any information related to a suspicious transaction report would seriously undermine the effectiveness of the fight against money laundering and terrorist financing. Exceptions to and restrictions of that right in accordance with Article 23 of Regulation (EU) 2016/679 may therefore be justified. The data subject has the right to request that a supervisory authority referred to in Article 51 of Regulation (EU) 2016/679 checks the lawfulness of	(90) The rights of access to data by the data subject as well as other data subject rights laid down in applicable data protection legislation are applicable to the personal data processed for the purpose of this Regulation. However, access by the data subject to any information related to a suspicious transaction report would seriously undermine the effectiveness of the fight against money laundering and terrorist financing. Exceptions to and restrictions of that right in accordance with Article 23 of Regulation (EU) 2016/679 may therefore be justified. ~~The data subject has the right to request that~~	As mentioned above in the context of Recitals 84 and 85, data processing shall be in full compliance with the requirements of the GDPR. Against this background, it could create legal uncertainty if certain aspects are picked out. Chapter VIII of the GDPR shall instead apply to full extent and the Presidency suggests the deletion of the listing of particular GDPR articles.	AT: (Comments): The deletion of the reference to Articles 51 and 79 is ok, instead a general reference to Chapter VIII of the GDPR could be made. The last sentence regarding a “black box” procedure, where the supervisory authority checks the lawfulness of a processing when the right of access to data has been restricted and the data subject doesn’t even know if personal data has been processed or transmitted, shouldn’t be deleted. If it is deleted, the question arises on what provision this possibility of carrying out a “black-box” procedure is based on. FR: (Comments): See comments above on recital 85. We believe Member States should be able to apply Directive 2016/680 to the processing of data by their FIU.

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the processing and has the right to seek a judicial remedy referred to in Article 79 of that Regulation. The supervisory authority may also act on an ex-officio basis. Without prejudice to the restrictions to the right to access, the supervisory authority should be able to inform the data subject that all necessary verifications by the supervisory authority have taken place, and of the result as regards the lawfulness of the processing in question.	~~a supervisory authority referred to in Article 51 of Regulation (EU) 2016/679 checks the lawfulness of the processing and has the right to seek a judicial remedy referred to in Article 79 of that Regulation.~~ ~~The supervisory authority may also act on an ex-officio basis. Without prejudice to the restrictions to the right to access, the supervisory authority should be able to inform the data subject that all necessary verifications by the supervisory authority have taken place, and of the result as regards the lawfulness of the processing in question.~~		(90) <i>The rights of access to data by the data subject are applicable to the personal data processed for the purpose of this Regulation. However, access by the data subject to any information related to a suspicious transaction report would seriously undermine the effectiveness of the fight against money laundering and terrorist financing. Exceptions to and restrictions of that right in accordance with Article 23 of Regulation (EU) 2016/679 may therefore be justified. Member States may apply Directive 2016/680, as well as national law where appropriate, to the processing of data by their FIU, based on the sensitive nature of their activities and their relevance to national security.</i> <i>The data subject has the right to request that a supervisory authority referred to in Article 51 of Regulation (EU) 2016/679 checks the lawfulness of the processing and has the right to seek a judicial</i>

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			<i>remedy referred to in Article 79 of that Regulation. The supervisory authority may also act on an ex-officio basis. Without prejudice to the restrictions to the right to access, the supervisory authority should be able to inform the data subject that all necessary verifications by the supervisory authority have taken place, and of the result as regards the lawfulness of the processing in question.</i> ES: (Comments): ok
(91) Obligated entities might resort to the services of other private operators. However, the AML/CFT framework should apply to obliged entities only, and obliged entities should retain full responsibility for compliance with AML/CFT	(91) Obligated entities might resort to the services of other private operators. However, the AML/CFT framework should apply to obliged entities only, and obliged entities should retain full responsibility for compliance with AML/CFT		

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requirements. In order to ensure legal certainty and to avoid that some services are inadvertently brought into the scope of this regulation, it is necessary to clarify that persons that merely convert paper documents into electronic data and are acting under a contract with an obliged entity, and persons that provide credit institutions or financial institutions solely with messaging or other support systems for transmitting funds or with clearing and settlement systems do not fall within the scope of this Regulation.	requirements. In order to ensure legal certainty and to avoid that some services are inadvertently brought into the scope of this regulation, it is necessary to clarify that persons that merely convert paper documents into electronic data and are acting under a contract with an obliged entity, and persons that provide credit institutions or financial institutions solely with messaging or other support systems for transmitting funds or with clearing and settlement systems do not fall within the scope of this Regulation.		
(92) Obligated entities should obtain and hold adequate and	(92) Obligated entities should obtain and hold adequate and		

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accurate information on the beneficial ownership and control of legal persons. As bearer shares accord the ownership to the person who possesses the bearer share certificate, they allow the beneficial owner to remain anonymous. To ensure that those shares are not misused for money laundering or terrorist financing purposes, companies - other than those with listed securities on a regulated market or whose shares are issued as intermediated securities - should convert all existing bearer shares into registered shares. In addition, only bearer share warrants in intermediated form should be allowed.	accurate information on the beneficial ownership and control of legal persons. As bearer shares accord the ownership to the person who possesses the bearer share certificate, they allow the beneficial owner to remain anonymous. To ensure that those shares are not misused for money laundering or terrorist financing purposes, companies - other than those with listed securities on a regulated market or whose shares are issued as intermediated securities - should convert all existing bearer shares into registered shares. In addition, only bearer share warrants in intermediated form should be allowed.		

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(93) The anonymity of crypto-assets exposes them to risks of misuse for criminal purposes. Anonymous crypto-asset wallets do not allow the traceability of crypto-asset transfers, whilst also making it difficult to identify linked transactions that may raise suspicion or to apply to adequate level of customer due diligence. In order to ensure effective application of AML/CFT requirements to crypto-assets, it is necessary to prohibit the provision and the custody of anonymous crypto-asset wallets by crypto-asset service providers.	(93) The anonymity of crypto-assets exposes them to risks of misuse for criminal purposes. Anonymous crypto-asset wallets do not allow the traceability of crypto-asset transfers, whilst also making it difficult to identify linked transactions that may raise suspicion or to apply to adequate level of customer due diligence. In order to ensure effective application of AML/CFT requirements to crypto-assets, it is necessary to prohibit the provision and the custody of anonymous crypto-asset wallets by crypto-asset service providers.		

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(94) The use of large cash payments is highly vulnerable to money laundering and terrorist financing; this has not been sufficiently mitigated by the requirement for traders in goods to be subject to anti-money laundering rules when making or receiving cash payments of EUR 10 000 or more. At the same time, differences in approaches among Member States have undermined the level playing field within the internal market to the detriment of businesses located in Member States with stricter controls. It is therefore necessary to introduce a Union-wide limit to large cash payments of EUR 10 000. Member	(94) The use of large cash payments is highly vulnerable to money laundering and terrorist financing; this has not been sufficiently mitigated by the requirement for traders in goods to be subject to anti-money laundering rules when making or receiving cash payments of EUR 10 000 or more. At the same time, differences in approaches among Member States have undermined the level playing field within the internal market to the detriment of businesses located in Member States with stricter controls. It is therefore necessary to introduce a Union-wide limit to large cash payments of EUR 10 000. Member		

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
States should be able to adopt lower thresholds and further stricter provisions.	States should be able to adopt lower thresholds and further stricter provisions.		
(95) The Commission should assess the costs, benefits and impacts of lowering the limit to large cash payments at Union level with a view to levelling further the playing field for businesses and reducing opportunities for criminals to use cash for money laundering. This assessment should consider in particular the most appropriate level for a harmonised limit to cash payments at Union level considering the current existing limits to cash payments in place in a large number of Member States,	(95) The Commission should assess the costs, benefits and impacts of lowering the limit to large cash payments at Union level with a view to levelling further the playing field for businesses and reducing opportunities for criminals to use cash for money laundering. This assessment should consider in particular the most appropriate level for a harmonised limit to cash payments at Union level considering the current existing limits to cash payments in place in a large number of Member States,		

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the enforceability of such a limit at Union level and the effects of such a limit on the legal tender status of the euro.	the enforceability of such a limit at Union level and the effects of such a limit on the legal tender status of the euro.		
(96) The Commission should also assess the costs, benefits and impacts of lowering the threshold for the identification of beneficial owners when control is exercised through ownership. This assessment should consider in particular the lessons learned from Member States or third countries having introduced lower thresholds.	(96) The Commission should also assess the costs, benefits and impacts of lowering the threshold for the identification of beneficial owners when control is exercised through ownership. This assessment should consider in particular the lessons learned from Member States or third countries having introduced lower thresholds.		
(97) In order to ensure consistent application of AML/CFT requirements, the power to adopt	(97) In order to ensure consistent application of AML/CFT requirements, the power to adopt		

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acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to supplement this Regulation by adopting delegated acts identifying high-risk third countries, third countries with compliance weaknesses and countries that pose a threat to the Union's financial system and defining harmonised and proportionate enhanced due diligence measures as well as, where relevant, mitigating measures as well as the regulatory technical standards setting out the minimum requirements of group-wide policies, controls and procedures and the conditions	acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to supplement this Regulation by adopting delegated acts identifying high-risk third countries, third countries with compliance weaknesses and countries that pose a threat to the Union's financial system and defining harmonised and proportionate enhanced due diligence measures as well as, where relevant, mitigating measures as well as the regulatory technical standards setting out the minimum requirements of group-wide policies, controls and procedures and the conditions		

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under which structures which share common ownership, management or compliance controls are required to apply group-wide policies, controls and procedures, the actions to be taken by groups when the laws of third countries do not permit the application of group-wide policies, controls and procedures and supervisory measures, the sectors and transactions subject to lower thresholds for the performance of customer due diligence and the information necessary for the performance of customer due diligence. It is of particular importance that the Commission carry out appropriate consultations	under which structures which share common ownership, management or compliance controls are required to apply group-wide policies, controls and procedures, the actions to be taken by groups when the laws of third countries do not permit the application of group-wide policies, controls and procedures and supervisory measures, the sectors and transactions subject to lower thresholds for the performance of customer due diligence and the information necessary for the performance of customer due diligence. It is of particular importance that the Commission carry out appropriate consultations		

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during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ³⁸ . In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.	during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ³⁹ . In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.		

³⁸ OJ L 123, 12.5.2016, p. 1.

³⁹ OJ L 123, 12.5.2016, p. 1.

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(98) In order to ensure uniform conditions for the application of this Regulation, implementing powers should be conferred on the Commission in order to identify legal arrangements similar to express trusts governed by the national laws of Member States as well as to adopt implementing technical standards specifying the format to be used for the reporting of suspicious transactions. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁴⁰ .	(98) In order to ensure uniform conditions for the application of this Regulation, implementing powers should be conferred on the Commission in order to identify legal arrangements similar to express trusts governed by the national laws of Member States as well as to adopt implementing technical standards specifying the format to be used for the reporting of suspicious transactions. Those powers should be exercised in accordance with Regulation (EU)		FR: (Comments): In line with amendment proposal on recital 78. (98) <i>In order to ensure uniform conditions for the application of this Regulation, implementing powers should be conferred on the Commission in order to identify legal arrangements similar to express trusts governed by the national laws of Member States as well as to adopt implementing technical standards specifying a <u>minimum set of data to be included in the format to be used</u> for the reporting of suspicious transactions. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of</i>

⁴⁰ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	No 182/2011 of the European Parliament and of the Council ⁴¹ .		<i>the European Parliament and of the Council</i> ⁴² .
(99) This Regulation respects the fundamental rights and observes the principles recognised by the Charter, in particular the right to respect for private and family life (Article 7 of the Charter), the right to the protection of personal data (Article 8 of the Charter) and the freedom to conduct a business (Article 16 of the Charter).	(99) This Regulation respects the fundamental rights and observes the principles recognised by the Charter, in particular the right to respect for private and family life (Article 7 of the Charter), the right to the protection of personal data (Article 8 of the Charter) and the freedom to conduct a business (Article 16 of the Charter).		
(100) In accordance with Article 21 of the Charter, which prohibits	(100) In accordance with Article 21 of the Charter, which		

⁴¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁴² Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

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discrimination based on any grounds, obliged entities should perform risk assessments in the context of customer due diligence without discrimination.	prohibits discrimination based on any grounds, obliged entities should perform risk assessments in the context of customer due diligence without discrimination.		
(101) When drawing up a report evaluating the implementation of this Regulation, the Commission should give due consideration to the respect of the fundamental rights and principles recognised by the Charter.	(101) When drawing up a report evaluating the implementation of this Regulation, the Commission should give due consideration to the respect of the fundamental rights and principles recognised by the Charter.		
(102) Since the objective of this Regulation, namely to prevent the use of the Union's financial system for the purposes of money laundering and terrorist financing,	(102) Since the objective of this Regulation, namely to prevent the use of the Union's financial system for the purposes of money laundering and terrorist financing,		

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cannot be sufficiently achieved by the Member States and can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.	cannot be sufficiently achieved by the Member States and can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.		
(103) The European Data Protection Supervisor has been consulted in accordance with Article 42 of Regulation (EU)	(103) The European Data Protection Supervisor has been consulted in accordance with Article 42 of Regulation (EU)		

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2018/1725 [and delivered an opinion on ... ⁴³],	2018/1725 [and delivered an opinion on ... ⁴⁴],		
HAVE ADOPTED THIS REGULATION:			
CHAPTER I			
GENERAL PROVISIONS			
Section 1	Section 1		
Subject matter and definitions	Subject matter and definitions		
<i>Article 1</i>	<i>Article 1</i>		
Subject matter	Subject matter		

⁴³ OJ C , , p. .

⁴⁴ OJ C , , p. .

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This Regulation lays down rules concerning:	To prevent the misuse of the financial system for money laundering and the financing of terrorism this This Regulation lays down rules concerning:		IT: (Comments): It should be considered that, in line with the FATF Recommendation, specific measures referring to proliferation financing have been introduced. This area of competence should also be properly reflected in the scope of the subject matter of this Article. ES: (Comments): Do not agree. This Regulation is not only focused on preventing the misuse of the financial systems for ML/FT, but it is aimed to cover other economic sectors.
(a) the measures to be applied by obliged entities to prevent money laundering and terrorist financing;	(a) ~~the~~ measures to be applied by obliged entities ~~to prevent money laundering and terrorist financing;~~		

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(b) beneficial ownership transparency requirements for legal entities and arrangements;	(b) beneficial ownership transparency requirements for legal entities ~~and~~ , express trusts and other similar legal arrangements;	In order to unify the text of the Regulation, the word “other” has been replaced by word “similar”.	ES: (Comments): ok IE: (Comments): Agreed DE: (Comments): We see no immediate added value in mentioning the data protection at this point.
	(c) ~~related~~ data protection and record-retention provisions related to points (a) and (b);	Removal of redundant words. The relationship is already expressed by reference to the previous letters.	IT: (Comments): This may not be necessary and does not even seem appropriate: applicable data protection and record retention rules result not only from this regulation (whose main purposes are different) but also from general data protection provisions.

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			ES: (Comments): ok
(c) measures to limit the misuse of bearer instruments.	(ed) measures to limit the misuse of anonymous ~~bearer~~ instruments.		SI: (Comments): We propose to include a definition in Article 2 on “anonymous instruments” in line with the following drafting: <u>“Anonymous instruments shall mean any instrument or product that provides anonymity or enables, directly or indirectly, the concealment of the customer’s identity or provides the inability of transaction tracking.”</u> IT: (Comments): <u>ed) measures to limit the misuse of anonymous instruments and the misuse of bearer</u> ~~bearer~~ instruments. <u>“Anonymous instruments” are outrightly prohibited by the</u>

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			regulation (see article 58); hence, the reference to “limit the misuse” seems not appropriate. While anonymous instruments should be limited in their “use”, the obligation should remain in this article to have measures in place specifically against the misuses of bearer instruments (such as the misuse of cash). We therefore do not support this amendment.
Article 2	Article 2		
Definitions	Definitions		DE: (Comments): We suggest an additional definition of proceeds (as in Article 3(1) of the Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation) as the term is used several times in this Regulation.

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For the purposes of this Regulation, the following definitions apply:	For the purposes of this Regulation, the following definitions apply:		SI: (Comments): In relation to Art 1 point (d) as mentioned above, we propose to include a definition in Article 2 on “anonymous instruments” in line with the following drafting: <u>“Anonymous instruments shall mean any instrument or product that provides anonymity or enables, directly or indirectly, the concealment of the customer’s identity or provides the inability of transaction tracking.”</u>
(1) ‘money laundering’ means the conduct as set out in Article 3, paragraphs 1 and 5 of Directive (EU) 2018/1673 including aiding and abetting, inciting and attempting to commit that conduct, whether the activities which generated the property to be	(1) ‘money laundering’ means the conduct as set out in Article 3, paragraphs 1 and 5 of Directive (EU) 2018/1673 including aiding and abetting, inciting and attempting to commit that conduct, whether the activities which generated the property to be		IT: (Comments): Unclear why the last sentence on the mental element has been deleted. We do not support this amendment as it would: • “disconnect” this definition from the notion of money laundering in criminal law;

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laundered were carried out on the territory of a Member State or on that of a third country. Knowledge, intent or purpose required as an element of that conduct may be inferred from objective factual circumstances;	laundered were carried out on the territory of a Member State or on that of a third country. ~~Knowledge, intent or purpose required as an element of that conduct may be inferred from objective factual circumstances;~~		impact on the detection of suspicious transaction for the purpose of reporting to the FIU, as a consequence of more stringent requirements in assessing the mental element. AT: (Comments): Art 2 (1) and (3) refer to Directive 2018/1673 (the criminal directive), which leaves ample space for interpretation. The legal technique of referring in a regulation that is directly applicable to a directive that requires implementation and only provides for minimum standards is open to criticism. The criminal directive even refers explicitly and repeatedly to national law. National legislators have considerable scope for implementation with regard to the range of penalties to which the definition of criminal activity is linked. Furthermore, national legislators also have powers of selection (e.g. "robbery or theft"). Finally, the offense categories

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			chosen in the directive are unclear (e.g. "cybercrime"). As a result, there will be no uniform application of the law in the Member States. IE: (Comments): Ireland did not opt-in to transpose Directive 2018/1673 as it was adopted under Article 83 TFEU, which gives us that option. We have sought legal advice as to whether we definitions that refer to this Directive would be legally binding in Ireland, but we are unsure how long this could take. Perhaps the EU legal services should be asked for advice? DE: (Comments): We support the proposed deletion since we have serious legal concerns against defining the money laundering offence's intent elements in this (non-criminal law) regulation.

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(2) 'terrorist financing' means the conduct set out in Article 11 of Directive (EU) 2017/541 including aiding and abetting, inciting and attempting to commit that conduct, whether carried out on the territory of a Member State or on that of a third country. Knowledge, intent or purpose required as an element of that conduct may be inferred from objective factual circumstances;	(2) 'terrorist financing' means the conduct set out in Article 11 of Directive (EU) 2017/541 including aiding and abetting, inciting and attempting to commit that conduct, whether carried out on the territory of a Member State or on that of a third country. ~~Knowledge, intent or purpose required as an element of that conduct may be inferred from objective factual circumstances;~~		IT: (Comments): Unclear why the last sentence on the mental element has been deleted. We do not support this amendment for the same reasons recalled under n. (1) above. DE: (Comments): We support the proposed deletion since we have serious legal concerns against defining the terrorist financing offence's intent elements in this (non-criminal law) regulation
(3) 'criminal activity' means criminal activity as defined in Article 2(1) of Directive (EU) 2018/1673, as well as fraud affecting the Union's financial interests as defined in Article 3(2)	(3) 'criminal activity' means criminal activity as defined in Article 2(1) of Directive (EU) 2018/1673, as well as fraud affecting the Union's financial interests as defined in Article 3(2)		AT: (Comments): Art 2 (1) and (3) refer to Directive 2018/1673 (the criminal directive), which leaves ample space for interpretation. The legal technique of referring in a regulation that is directly applicable to a directive

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of Directive (EU) 2017/1371, passive and active corruption as defined in Article 4 (2) and misappropriation as defined in Article 4(3), second subparagraph of that Directive;	of Directive (EU) 2017/1371, passive and active corruption as defined in Article 4 (2) and misappropriation as defined in Article 4(3), second subparagraph of that Directive;		that requires implementation and only provides for minimum standards is open to criticism. The criminal directive even refers explicitly and repeatedly to national law. National legislators have considerable scope for implementation with regard to the range of penalties to which the definition of criminal activity is linked. Furthermore, national legislators also have powers of selection (e.g. "robbery or theft"). Finally, the offense categories chosen in the directive are unclear (e.g. "cybercrime"). As a result, there will be no uniform application of the law in the Member States.
(4) 'property' means property as defined in Article 2(2) of Directive (EU) 2018/1673;	(4) 'property' means property as defined in Article 2(2) of Directive (EU) 2018/1673;		IE: (Comments): Our concerns about definitions that refer to this Directive are laid out above DE: (Comments):

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			This definition should be in line with the definition of Article 3(2) of the Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation: <i>“(2) ‘property’ means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property;”</i>
(5) ‘credit institution’ means a credit institution as defined in Article 4(1), point (1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁴⁵, including branches thereof, as defined in Article 4(1), point (17)	(5) ‘credit institution’ means: (a) a credit institution as defined in Article 4(1), point (1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁴⁶, (b) ~~including branches thereof as defined in Article 4(1), point (17)~~		SI: (Comments): In our view branches are already considered to be obliged entities and hence liable for implementing AML measures, therefore we don’t oppose the proposed amendment. However, this proposal represents an extension from the CRR definition for the purposes of this

⁴⁵ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁴⁶ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

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of that Regulation, located in the Union, whether their head office is situated within the Union or in a third country;	~~of that Regulation,~~ a branch of a credit institution referred to in point (a), when located in the Union, whether ~~their~~ its head office is situated within the Union or in a third country;		particular legislative package. We would like to stress that the use of the term “branch” in all provisions should be clear without doubt especially with regard to home-host supervision. At this point we see a potential issue regarding the addressee of a supervisory measure: a branch as such is not a legal entity (it doesn’t have legal subjectivity) and as such cannot be the addressee of the measures issued by a supervisor. BE: (Comments): NBB: We also suggest clarifying the situation as regards “other forms of establishment” (namely, networks of agents and/or distributors) by including them in the revised definition of credit institutions and of financial institutions (see below).

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(6) ‘financial institution’ means:	(6) ‘financial institution’ means:		
(a) an undertaking other than a credit institution or an investment firm, which carries out one or more of the activities listed in points (2) to (12), (14) and (15) of Annex I to Directive 2013/36/EU of the European Parliament and of the Council ⁴⁷ , including the activities of currency exchange offices (bureaux de change), or the principal activity of which is to acquire holdings, including a	(a) an undertaking other than a credit institution or an investment firm, which carries out one or more of the activities listed in points (2) to (12), (14) and (15) of Annex I to Directive 2013/36/EU of the European Parliament and of the Council ⁴⁸ , including the activities of currency exchange offices (bureaux de change), ~~or the principal activity of which is to acquire holdings, including a financial holding company and a~~		NL: (Comments): At this point in time, we see no valid reason to add CSDs. They primarily service a limited group of institutional clients and are heavily regulated. Thus, the added value from an AML/CFT perspective seems limited. AISPs are currently considered OEs in NL. Therefore, we would prefer to include them IT: (Comments): The choice of removing the category of financial holding companies and mixed financial holdings from the definition of “financial institution” provided for in article 2 of the Regulation should

⁴⁷ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

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

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financial holding company and a mixed financial holding company;	~~mixed financial holding company;~~ creditors as defined in Article 4, point (2) of Directive 2014/17/EU of the European Parliament and of the Council and in Article 3, point (b) of Directive 2008/48/EC of the European Parliament and of the Council and the activities of central securities depositories as defined in Article 2(1), point (1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014, but with the exception of the activities of account information service providers as defined in Article 4, point (19) of Directive (EU) 2015/2366 of the European		be reconsidered; indeed, including them within such definition – when they are identified as parent undertakings of a group – would be an effective solution to ensure a more comprehensive extension of all the obligations under AMLR to each parent undertaking; this choice would also prevent the need for amending single articles of the Regulation (or the AMLD 6 and the AMLA Regulation) in order to include all parent undertakings within their scope expressly. Furthermore, it is worth recalling that such an approach would be consistent with the EU prudential framework (article 3 of CRD V as amended by the CRD 6 expressly includes within the definition of “Institution” also financial holding companies and mixed financial holding companies that have been granted approval in accordance with Article 21a of that Directive). In our view, <u>CSDs</u> should not be included among financial

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	Parliament and of the Council of 25 November 2015;		institutions nor, more in general, be considered as an obliged entity. Considering the nature of their customers (depositors are typically financial institutions that hold securities either on their own account or on behalf of customers on whom they applied out CDD measures) and their operational characteristics, we deem that requiring them to carry out the whole range of AML obligations would be disproportionate (in the Italian framework they are only subject to STR obligations). We point out that MICA Regulation will include amongst the activities listed in Annex I to Directive 2013/36/EU, two new points (16 and 17) which will refer to (see. art. 123a MiCA): - 16. Issuance of asset-referenced tokens as defined in point (3) of Article 3 of Regulation (EU) No xxx/xxx [MiCA] of the European Parliament and of the Council.

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			- 17. Crypto-asset services as defined in point (9) of Article 3 of Regulation (EU) No xxx/xxx [MiCA] of the European Parliament and of the Council." We deem that a reference to these points (or at least at point 16) should be included in the definition of financial institution (see also our comment under definition of CASPs). SE: (Comments): We have no objection including creditors as defined in article 4 in Directive 2014/17. We question if the definition of creditors as defined in Article 3, point (b) of Directive 2008/48/EC, is sufficiently precise. According to that article, a creditor means a natural or legal person who grants or promises to grant credit in the course of his trade, business or profession. As we understand the intention behind the addition, the aim is to capture those legal persons who grant credit <i>as</i> their

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			trade, business or profession, even though they are not credit institutions. We are afraid that the current definition could be interpreted to include every business which grants a credit in course of its business, i.e., most businesses. We also wonder how the definition relates to the definition of obliged entities, in particular point 3 k, creditors for mortgage and consumer credits, other than credit institutions defined in Article 2(5) and financial institutions defined in Article 2(6), and credit intermediaries for mortgage and consumer credits. We are unsure if there is meant to be a difference between “financial institutions” as defined in article 2 (6) and creditors as defined in article 3 (k). As we’ve previously commented, we also do not see the need to include central securities depositories as obliged entities, although we can accept it.

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			ES: (Comments): We are in favour of considering all the entities mentioned in this point (6)(a) as obliged entities. However, we see no reason or risk-based approach to consider professionals who are natural persons providing these services as financial entities. If this proposal is kept, we believe that the extra regulatory burden they would face could jeopardise their viability, despite the fact that this is provided for in the sectoral regulations governing them. BG: (Comments): Propose to include account information service providers (AISPs) in definition. Regarding the addition of mortgage creditors and consumer creditors in the definition of ‘financial institution’: The addition in the definition could create potential confusion regarding

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			the status of those entities as financial institutions. Additionally, the AMLR proposal itself states in (17): it is appropriate to include consumer and mortgage creditors and intermediaries that are not credit institutions or financial institutions but that are, as a result of their activities, exposed to money laundering and terrorist financing risks. Propose to revert back to original proposal and listing them as separate obliged entities in (9) and (11), and also to specify that the definitions concern entities which are not credit and financial institutions under (5) and (6) of this Article. DE: (Comments): <u>On holding companies:</u> We very strongly oppose the deletion of holding companies from the list of obliged entities and we continue to voice concerns to partly oblige holding companies as parent undertakings.

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			Having financial (and insurance) holding companies listed as obliged entities is a particularly sensitive topic due to a severe fraud case in a major corporation which operated as a holding structure for financial sector affiliates within and outside the EU. In drawing the conclusions from this scandal, Germany aims at both extending the definition of financial holding structures in CRR/CRD and strengthening AML supervision for financial holdings. We agree that the main task for holding companies as obliged entities should be to ensure group-wide compliance with AML-requirements. It is at the same time not excluded that the holding company itself is also involved in operational activities and thus should also be obliged to apply other AML-requirements such as CDD and the obligation to file STRs (if there is a concern of ambiguity here, a recital would be appropriate to explain precisely

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			these circumstances). In the case we are referring to, the holding company itself not only held and managed shares, but also developed business activities itself (without becoming obliged as a credit/financial institution). Because of the business activities within the holding company itself, it would just not have been enough to only impose on the holding company to ensure compliance with group-wide obligations. It is of utmost relevance to us that financial holding companies are part of a stable supervisory relationship so that there is clarity that financial holding companies are 1. addressees of money laundering law and 2. who the responsible supervisory authority is. It has to be ensured that the holding company can be subject to supervisory inspections and measures, including measures and integrity checks to the top management of the holding company covering also AML

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			specific aspects. Measures to lower-ranking affiliates qualifying as obliged entities as financial institutions and their management, possibly in a different jurisdiction, would not ensure the same level of effectiveness in terms of compliance and supervision. For more clarity we would propose to include (mixed) financial holding companies (and possibly also insurance holding companies) as a separate litera under the definition of financial institution: <u>Drafting proposal</u> Art. 2 para. 6 lit. h AMLR Financial holdings companies and mixed financial holding companies <u>On AISPs:</u> We can support excluding them explicitly from the list of obliged entities since they do not participate in the transaction and thus do not hold significant ML/TF risk. <u>On occupational pension funds:</u>

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			We agree that excluding institutions for occupational retirement provision would be consistent with the proposed amendment of the Presidency to exclude from the definition of insurance intermediary (point 6 (c) of Article 2 of AMLR) entities with lower ML-TF risks. We are therefore open to discuss the exclusion of those institutions from the definition of financial institution. Under German AML/CTF law, institutions for occupational retirement provision are not obliged entities. This applies to occupational pension provision via pension funds as well as via provident funds. If occupational retirement provision is not provided by pension funds but by other pension models, certain ML-TF requirements may apply, for example in the case of life insurance policies. However, in these cases, only simplified due diligence requirements must be

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			observed under German ML-TF law as the risk of money laundering in the area of occupational retirement provision is considered to be rather low. Even if there are models involving voluntary payments with early repayment, the opportunities for money laundering are limited.
(b) an insurance undertaking as defined in Article 13, point (1) of Directive 2009/138/EC of the European Parliament and of the Council ⁴⁹ , insofar as it carries out life or other investment-related assurance activities covered by that Directive, including insurance holding companies and mixed-	(b) an insurance undertaking as defined in Article 13, point (1) of Directive 2009/138/EC of the European Parliament and of the Council ⁵⁰ , insofar as it carries out life or other investment-related assurance activities covered by that Directive, ~~including insurance holding companies and mixed-~~		DE: (Comments): <u>On holding companies:</u> We very strongly oppose the deletion of holding companies from the list of obliged entities and we continue to voice concerns to partly oblige holding companies as parent undertakings. Having financial and insurance holding companies listed as obliged entities is a particularly sensitive

⁴⁹ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

⁵⁰ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

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activity insurance holding companies as defined, respectively, in Article 212(1), points (f) and (g) of Directive 2009/138/EC;	~~activity insurance holding companies as defined, respectively, in Article 212(1), points (f) and (g) of Directive 2009/138/EC;~~		topic due to a severe fraud case in a major corporation which operated as a holding structure for financial sector affiliates within and outside the EU. In drawing the conclusions from this scandal, Germany aims at both extending the definition of financial holding structures in CRR/CRD and strengthening AML supervision for financial holdings. We agree that the main task for holding companies as obliged entities should be to ensure group-wide compliance with AML-requirements. It is at the same time not excluded that the holding company itself is also involved in operational activities and thus should also be obliged to apply other AML-requirements such as CDD and the obligation to file STRs (if there is a concern of ambiguity here, a recital would be appropriate to explain precisely these circumstances). In the case we are referring to, the holding company itself not only held and managed shares, but also developed

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			business activities itself (without becoming obliged as a credit/financial institution). Because of the business activities within the holding company itself, it would just not have been enough to only impose on the holding company to ensure compliance with group-wide obligations. It is of utmost relevance to us that financial holding companies are part of a stable supervisory relationship so that there is clarity that financial holding companies are 1. addressees of money laundering law and 2. who the responsible supervisory authority is. It has to be ensured that the holding company can be subject to supervisory inspections and measures, including measures and integrity checks to the top management of the holding company covering also AML specific aspects. Measures to lower-ranking affiliates qualifying as obliged entities as financial institutions and their management,

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			possibly in a different jurisdiction, would not ensure the same level of effectiveness in terms of compliance and supervision. For more clarity we would propose to include (mixed) financial holding companies (and possibly also insurance holding companies) as a separate litera under the definition of financial institution: <u>Drafting proposal</u> Art. 2 para. 6 lit. h AMLR Financial holdings companies and mixed financial holding companies <u>On insurance undertakings:</u> We see the need for clarifications what kind of activities shall be subject to AML/CTF requirements with the wording “investment-related assurance activities”. Directive 2009/138/EC gives no definition.
(c) an insurance intermediary as defined in Article 2(1), point (3) of	(c) an insurance intermediary as defined in Article 2(1), point (3) of		DE: (Comments):

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Directive (EU) 2016/97 of the European Parliament and of the Council ⁵¹ where it acts with respect to life insurance and other investment-related services;	Directive (EU) 2016/97 of the European Parliament and of the Council ⁵² where it acts with respect to life insurance and other investment-related insurance services, with the exception of an insurance intermediary which does not collect premiums or amounts intended for the customer and which acts under the full responsibility of one or more insurance undertakings or intermediaries for the products which concern them respectively;		We see the need for clarification as regards the term “investment-related services”. Directive (EU) 2016/97 gives no definition of the respective services.
(d) an investment firm as defined in Article 4(1), point (1) of	(d) an investment firm as defined in Article 4(1), point (1) of		

⁵¹ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L 26, 2.2.2016, p. 19).

⁵² Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L 26, 2.2.2016, p. 19).

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Directive 2014/65/EU of the European Parliament and of the Council ⁵³ ;	Directive 2014/65/EU of the European Parliament and of the Council ⁵⁴ ;		
(e) a collective investment undertaking, in particular:	(e) a collective investment undertaking, in particular:		EE: (Comments): EE comment. We kindly ask to request some additional reasoning from COM about the use of “in particular” in this provision. Does it refer that the following list (i.e., points (i) and (ii)) are non-exhaustive? Since financial institutions are obliged entities, and there are no additional limitations on the collective investment undertakings, the phrasing might be problematic, as all the obliged entities should be able to identify themselves unambiguously.

⁵³ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173, 12.6.2014, p. 349).

⁵⁴ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173, 12.6.2014, p. 349).

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(i) an undertaking for collective investment in transferable securities as defined in Article 1(2) of Directive 2009/65/EC and its management company as defined in Article 2(1)(b) of that Directive or an investment company authorised in accordance with that Directive and which has not designated a management company, that makes available for purchase units of UCITS in the Union;	(i) an undertaking for collective investment in transferable securities as defined in Article 1(2) of Directive 2009/65/EC and its management company as defined in Article 2(1)(b) of that Directive or an investment company authorised in accordance with that Directive and which has not designated a management company, that makes available for purchase units of UCITS in the Union;		DE: (Comments): In our view, the managing companies should be the obliged entity. We do not consider adequate that an externally managed fund should be obliged, since the management company manages it and thus makes all decisions for it. Internally managed investment companies where the fund is its own manager must of course also be obliged parties. <u>Drafting proposal:</u> (i) a company as defined in Article 2(1)(b) of Directive 2009/65/EC acting as designated management company for an undertaking for collective investment in transferable securities as defined in Article 1(2) of that Directive or an investment company authorised in accordance with that Directive and which has not designated a management company, that makes available for purchase units of UCITS in the Union;

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			MT: (Comments): On the basis of comments laid down in relation to Article 6a on outsourcing, MT is proposing the following drafting amendments: (i) an undertaking for collective investment in transferable securities as defined in Article 1(2) of Directive 2009/65/EC ~~and its management company as defined in Article 2(1)(b) of that Directive~~ or an investment company authorised in accordance with that Directive and which has not designated a management company, that makes available for purchase units of UCITS in the Union;
(ii) an alternative investment fund as defined in Article 4(1)(a) of Directive 2011/61/EU and its alternative investment fund	(ii) an alternative investment fund as defined in Article 4(1)(a) of Directive 2011/61/EU and its alternative investment fund		DE: (Comments): In our view, the investment fund manager should be the obliged entity. We do not consider adequate

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
manager as defined in Article 4(1)(b) of that Directive that fall within the scope set out in Article 2 of that Directive;	manager as defined in Article 4(1)(b) of that Directive that fall within the scope set out in Article 2 of that Directive;		that an externally managed fund should be obliged, since the investment fund manager makes all decisions for it. <u>Drafting proposal:</u> (ii) an alternative investment fund manager as defined in Article 4(1)(b) ~~of Directive 2011/61/EU and its alternative investment fund manager as defined in Article 4(1)(b)~~ of Directive 2011/61/EU that falls within the scope set out in Article 2 of that Directive; MT: (Comments): On the basis of comments laid down in relation to Article 6a on outsourcing, MT is proposing the following drafting amendments: (ii) an alternative investment fund as defined in Article 4(1)(a) of Directive 2011/61/EU ~~and its alternative investment fund manager as defined in Article 4(1)(b) of that Directive~~ that falls

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			within the scope set out in Article 2 of that Directive;
	(ea) a crypto-asset service provider as defined in Article 3, point (1) of Regulation ~~please insert reference—proposal for a Regulation on Markets in Crypto-Assets, and amending Directive (EU) 2019/1937—COM/2020/593 final~~;	Definition returned to original location and amended in accordance with TFR proposal.	IT: (Comments): We support the explicit addition of "crypto-asset service providers" to the list of "financial institutions". We remind that they would also be explicitly covered by new point 17 in Annex I to Directive 2013/36 (please see our comment above). The same goes for the issuance of ART. Nonetheless, we note that issuers of ART other than banks remain out of the scope of the AMLR as it is currently drafted. According to MiCA ART issuers will be subject to a fully-fledged licensing and prudential regime; for this reason we strongly recommend to qualify them as “financial institutions” for the purposes of the AMLR, as is the case for CASPs or e-money institutions/banks issuing EMT (which will be covered via

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			reference to point 15 of the Annex I to CRD). Moreover, the proposal to include crypto-asset service provider in the notion of ‘financial institution’ has to be considered taking into account the need to avoid that the mere reference to MiCA (contained in the TFR) reduces the scope of the AMLR, ultimately raising a problem for the European framework's compliance with the FATF. In particular, we consider NFTs that are rapidly evolving (not only as work of art and gaming assets but also as collateral for loans); they could be exchanged on trading platforms regardless of whether they are used for payment or investment purposes, and pose ML/TF risks taking into account possible widespread adoption, and their possible use aimed at transferring high amount of funds or of crypto-assets in exchange for goods of uncertain and high volatility value. NFTs are already traded not only by CASPs but also by other subjects

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			that could be considered obliged entities different from financial institutions (e.g. auction houses) and also just partially already covered in the list of the obliged entities (e.g. NFTs considered as assets equivalent to work of art are traded not only by traditional auction houses but also by dedicated NFT platforms such as OpenSea, Nifty Gateway). In this perspective, taking into account the above-mentioned risks, we consider that NFTs should be included within the scope of AMLR. Proposal when traded and used for payment or investment purposes; at the same time, we acknowledge that practical difficulties may arise from the lack of a licensing or registration system for these subjects under the EU legislation. Finally, consider possible amendments to the TFR to bring it into line with the AMLR (e.g. on internal controls and compliance with targeted financial sanctions) and the rest of the AML Package

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			(notably AMLAR and the system of competences attributed to AMLA). See on this note targeted amendments under article 50 of the AMLR. EE: (Comments): EE comment. We propose the following wording: “(ea) a crypto-asset service provider as defined in point 14 of this Article;” Otherwise there might be room for interpretation that the crypto-asset service provider that is meant under the financial service provider might be something different than the crypto-asset service provider that is defined under point 14. ES: (Comments): Please, see our comments to article 2(14), and the following proposal according to those “(ea) a crypto-asset service provider <u>with the exception of providing advice on crypto-assets</u>

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			<u>as defined in point (9)(h) of Article 3 (1) of the Regulation [please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final]</u> IE: (Comments): Not agreed. A CASP is not a financial institution. DE: (Comments): We explicitly support the inclusion of crypto-asset service providers as financial institutions.
(f) branches of financial institutions as defined in points (a) to (e), when located in the Union, whether their head office is situated in a Member State or in a third country;	(f) branches of financial institutions as defined in points (a) to (ea), when located in the Union, whether their head office is situated in a Member State or in a third country;		BE: (Comments): NBB: We suggest clarifying the situation as regards “other forms of establishment” (namely, networks of agents and distributors) by including them in the revised definition of financial institutions

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			(and also in the definition of credit institutions - see above).
			DE: (Comments): <u>Drafting proposal Art. 2 para. 6 lit. g AMLR:</u> (g) Financial holdings companies and mixed financial holding companies;
(7) 'trust or company service provider' means any person that, by way of its business, provides any of the following services to third parties:	(7) 'trust or company service provider' means any person that, by way of its business, provides any of the following services to third parties:		
(a) the formation of companies or other legal persons;	(a) the formation of companies or other legal persons;		
(b) acting as, or arranging for another person to act as, a director or secretary of a company, a partner	(b) acting as, or arranging for another person to act as, a director or secretary of a company, a partner		

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of a partnership, or a similar position in relation to other legal persons;	of a partnership, or a similar position in relation to other legal persons;		
(c) providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement;	(c) providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement;		<u>NL:</u> <u>(Comments):</u> <u>This is a very important matter for NL given our national context.</u> It should be clear from the wording that <i>solely</i> providing a registered office, business address, correspondence or administrative address, is considered a trust or company service. As substantiated by the COM during the CWP of 10/10/22, this is the original intent, but in our view the wording requires clarification as it could now be read that only when providing these services in addition to other related services these entities qualify as trust or company service providers. The confusion is partly caused by the fact that under NL law there is indeed a legal distinction between solely

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			providing a registered office, and providing a registered office + additional services. Text suggestion: (c) providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement, including any other related services provided to that company, partnership or legal arrangement. BE: (Comments): A company service providing a registered office, should be a OE even if (and mostly if) it does not provides related services for a company. Such a pure “letterbox co” is more dangerous than a CS providing a registered office and other services (such as coworking) and are the initial target of the FATF. DK:

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			(Comments): DK: The current wording from the AMLD4 has brought confusion, as the definition might indicate that several criteria need to be addressed in order for an entity to be covered by the definition, which cannot be the intention of the wording. We therefore suggest a minor change to the wording in order to clarify the definition and avoid the risk of unintentionally narrowing the definition. We therefore suggest the following amendment: (c) providing a registered office, business address, correspondence or administrative address ~~and~~ or other related services for a company, a partnership or any other legal person or arrangement.
(d) acting as, or arranging for another person to act as, a trustee of an express trust or performing an	(d) acting as, or arranging for another person to act as, a trustee of an express trust or performing an		

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equivalent function for a similar legal arrangement;	equivalent function for a similar legal arrangement;		
(e) acting as, or arranging for another person to act as, a nominee shareholder for another person;	(e) acting as, or arranging for another person to act as, a nominee shareholder for another person;		
(8) 'gambling services' means a service which involves wagering a stake with monetary value in games of chance, including those with an element of skill such as lotteries, casino games, poker games and betting transactions that are provided at a physical location, or by any means at a distance, by electronic means or any other technology for facilitating communication, and at the	(8) 'gambling services' means a service provided at a physical location or by any means at a distance, by electronic means or any other technology for facilitating communication, at the individual request of a recipient of services , which involves wagering a stake with monetary value	Clarification of the text to prevent misinterpretation and misapplication of AML/CFT requirements to all games of skill and not only to those games which are games of chance but include an element of skill.	NL: (Comments): We do not agree with the adjustments made to paragraph 8, since the definition is still unclear: - First of all, we would like to delete the word "or predominantly" under i). If the occurrence to win a price is predominantly based on chance, it is partly skills based. Therefore, at this moment, there is no distinction between i) and ii). So i) should just be wholly on chance. - Also, we would like to add to ii) that certain casino games are games of chance with including an element of skill. As an example,

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individual request of a recipient of services;	i) in games of chance such as lotteries, namely any game where a player makes a payment in exchange for a chance to win a prize with an economic value, and where the occurrence of a win or loss depends wholly or predominantly or partially on chance, including those; and ii) in games of chance with including an element of skill such as ~~lotteries,~~ casino games, poker games and betting transactions ~~that are provided at a physical location, or by any means at a distance, by electronic means or any other technology for facilitating communication, and at the~~		there is no specific skill needed for roulette or slot machines. - Furthermore, we would like to delete the words “and betting transactions”. There is no specific skill needed for betting transactions, since betting transactions are random, because odds are set in such way that a player have no advantage. - Eventually, the use of examples under ii) could be removed altogether, to prevent misinterpretation and misapplication. Especially because no examples are mentioned under i) as well. - We are in favour of deleting the phrase “makes a payment in exchange”, as stipulated under i), because this is not in line with the Dutch definition of gambling services. In The Netherlands, a prior payment is not always necessary, for example in the case of promotional games of chance. - We would like to see some clarification what is meant by the newly add sub sentence: “<i>at the</i>

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	individual request of a recipient of services;		<i>individual request of a recipient of services</i>". Does this also include games with multiple players, for example bingo? EE: (Comments): EE comment. We suggest inserting a specification, that the recipient wishes to take part precisely in "gambling" services. This would address our concern, that the broad definition would also apply to commercial lotteries that are organized as advertising campaigns (where the customer participates in a game of chance by purchasing a product or service) where the intention of the recipient of gambling service is also the purchase of the product or service. In addition, we would bring the understanding that stake is made in exchange of the chance to win a prize to the "front of brackets". Third amendment is propose to differentiate between the games described in i) and ii). At the moment, both subcategories are

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			defined as “games of chance”. It is also predominantly understood that many casino games are equally “games of chance” as lotteries, while only certain casino games include an important aspect of skill. We propose the following: “gambling services’ means a service provided at a physical location or by any means at a distance, by electronic means or any other technology for facilitating communication, at the individual request of a recipient of <u>gambling</u> services, which involves- wagering a stake with monetary value <u>in exchange for a chance to win a prize with a monetary value,</u> i) in games of chance such as lotteries, where the occurrence of a win or loss depends wholly or predominantly ~~or partially~~ on chance, including those; and ii) in games <u>where the element of chance with including is combined with the element of skill</u>

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			such as ~~lotteries~~, <u>certain</u> casino games, poker games and betting transactions ~~that are provided at a physical location, or by any means at a distance, by electronic means or any other technology for facilitating communication, and at the individual request of a recipient of services;~~ IE: (Comments): The reference to lotteries is unnecessary and unhelpful here, as Ireland has determined them to be a lower-risk form of gambling for ML/TF LT: (Comments): We believe that the formulation with the word “predominantly” brings more confusion on text interpretation, previous version of the text seemed clearer.
			DE: (Comments):

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			For clarification purposes and to ensure a uniform understanding, the term 'game of chance' itself should be defined. <u>Drafting suggestion:</u> 'Game' of chance' means any game where a player makes a payment in exchange for a chance to win, and where the occurrence of a win or loss depends wholly or predominantly on chance.
(9) 'mortgage creditor' means a creditor as defined in Article 4, point (2) of Directive 2014/17/EU of the European Parliament and of the Council ⁵⁵ ;	~~(9) 'mortgage creditor' means a creditor as defined in Article 4, point (2) of Directive 2014/17/EU of the European Parliament and of the Council⁵⁶;~~		
(10) 'mortgage credit intermediary' means a credit	(10) 'mortgage credit intermediary' means a credit		NL: (Comments):

⁵⁵ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 Text with EEA relevance (OJ L 60, 28.2.2014, p. 34).

⁵⁶ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 Text with EEA relevance (OJ L 60, 28.2.2014, p. 34).

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intermediary as defined in Article 4, point (5) of Directive 2014/17/EU;	intermediary as defined in Article 4, point (5) of Directive 2014/17/EU when holding the funds in connection with the credit agreement, with the exception of the mortgage credit intermediary carrying out activities under the full responsibility of one or more creditors or credit intermediaries;		In what cases will an intermediary hold funds in connection with a credit agreement? ES: (Comments): ok DE: (Comments): We support the clarification that only intermediaries are to be obliged where no credit or financial institution is involved that grants and processes the loan and is itself subject to AML/CFT requirements.
(11) ‘consumer creditor‘ means a creditor as defined in Article 3, point (b) of Directive 2008/48/EC	~~(11) — ‘consumer creditor‘ means a creditor as defined in Article 3, point (b) of Directive 2008/48/EC~~		DE: (Comments): We support including consumer creditors in the definition of financial institution.

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of the European Parliament and of the Council ⁵⁷ ;	~~of the European Parliament and of the Council~~ ⁵⁸ ;		
			EE: (Comments): EE Comment. Should credit servicers, in the context of the directive 2021/2167 on credit servicers and credit purchasers, be considered obligated entities? In addition, should credit purchasers, who finance credit agreements in the context of the directive 2021/2167, be also considered obliged persons? Could the PCY perhaps ask this from the EC, for clarification?
(12) ‘consumer a credit intermediary’ means a credit intermediary as defined in Article	(12) ‘consumer a credit intermediary’ means a credit intermediary as defined in Article 3, point (f) of Directive		DE: (Comments): We support the clarification that only intermediaries are to be obliged where no credit or financial

⁵⁷ Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

⁵⁸ Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

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3, point (f) of Directive 2008/48/EC;	2008/48/EC when holding the funds in connection with the credit agreement, with the exception of the consumer credit intermediary carrying out activities under the full responsibility of one or more creditors or credit intermediaries;		institution is involved that grants and processes the loan and is itself subject to AML/CFT requirements.
(13) ‘crypto-asset’ means a crypto-asset as defined in Article 3(1), point (2) of Regulation [please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final] except when falling under the categories listed in	(13) ‘crypto-asset’ means a crypto-asset as defined in Article 3(1), point (2) of Regulation [please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final] except when falling under the categories listed in		IT: (Comments): BE: (Comments): NBB: “ <u>except when falling under the categories listed in Article 2(2) of that Regulation or not otherwise qualifying as funds</u> ”: these part of the definition should be clarified because:

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Article 2(2) of that Regulation or not otherwise qualifying as funds;	Article 2(2) of that Regulation or not otherwise qualifying as funds;		- Article 2(2) of MICA R lists “entities and persons”; it does not list types of crypto-assets; article 2, (3) of MICA R lists crypto-assets that are excluded from MICA scope; in particular, article 2, (3) of MICA R excludes “funds, other than e-money tokens” - <u>“or not otherwise qualifying as funds”</u> should be clarified because e-money tokens are the only crypto assets to qualify as funds. Does that mean that the definition of crypto-assets does not cover crypto-assets not qualifying as funds? <u>Suggested definition:</u> ‘crypto-asset’ means a crypto-asset as defined in Article 3(1), point (2) of Regulation [please insert reference – proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final] except when falling under the categories listed in Article 2(~~2~~ <u>3</u>) of

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			that Regulation” or not otherwise qualifying as funds” <u>Suggestion of a new recital:</u> “MICA R does not apply to persons and entities listed in article 2, (2) of that Regulation. In this case, persons and entities are not subject to the AML Regulation”. DE: (Comments): <u>Technical question:</u> The chosen definition seems not to correspond to the approach of TFR, which also treats e-money-tokens as crypto-value, cf. Art. 3 (15) TFR. Is that intended?
(14) ‘crypto-asset service provider’ means a crypto-assets service provider as defined in Article 3(1), point (8) of Regulation [please insert reference – proposal]	(14) ‘crypto-asset service provider’ means a crypto-assets service provider as defined in Article 3(1), point (8) of Regulation [please insert reference – proposal]	Amendment in accordance with TFR proposal.	IT: (Comments): We suggest to refer to all CASPs without excluding those providing advice services, to maintain consistency with other advice

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for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final] where performing one or more crypto-asset services as defined in Article 3(1) point (9) of that Regulation;	for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 - COM/2020/593 final] where performing one or more crypto-asset services as defined in Article 3(1) point (9) of that Regulation, with the exception of providing advice on crypto-assets as defined in point (9)(h) of that Article;		services/activities provided with regard to (eg.) financial instruments EE: (Comments): EE comment. We notify the PSY of our position that we could also agree to the proposal if the addition in red would be left out. FR: (Comments): We are against not applying AMLR to VASP that provide advice on crypto-assets. All VASPs according to MiCA (art. 3 (9)h) should be included with the remit of this regulation. ES: (Comments): In order to avoid any misunderstanding, we consider important to maintain the same definitions provided by other regulations. Since last sentence ‘with the exception of providing advice on crypto-assets as defined in point (9)(h) of that Article’ is an

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			exception that is not included in the definition of CASPs provided either TFR or MiCa, we suggest this exception being removed from this definition [art 2(14)] and including it when defining the scope of CASPs that are considered FIs in article 2(6ea). See our comments to article 2(6ea)
	(14a) ‘Self-hosted address’ means a self-hosted address as defined in Article 3(1), point 18a of [Funds Transfer Regulation]	Amendment to integrate changes to AMLD from TFR	ES: (Comments): ok
	(14b) ‘Crowdfunding service providers’ means a crowdfunding service provider as defined in Article 2(1), point (e) of Regulation (EU) 2020/1503;		IT: (Comments): We suggest the following redrafting, which would provide a more precise definition: “‘Crowdfunding service providers’ means a crowdfunding service provider authorised according to ~~as defined in Article 2(1), point (e) of Regulation (EU) 2020/1503;~~ ” .

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			DE: (Comments): We support the explicit introduction of a definition of crowdfunding service providers.
	(14c) ‘Third-party financing intermediary’ means an undertaking, other than those which are otherwise obliged entities pursuant to Article 3 such as crowdfunding service providers, the business of which is to match or facilitate the matching, through an internet-based information system open to the public or to a limited number of funders of:		NL: (Comments): This seems to only relate to funding through loans and donations, not through investment. Does the intermediary fall in scope of the crowdfunding regulation or MiFID II? IT: (Comments): Firstly, we suggest not using the term “third-party financing intermediary” and refer to those entities as “crowdfunding service providers other than those authorised according to EU Regulation 2020/1503”. Secondly, we would highlight the following: - the proposed definition seems to cover a wider set of activities than those qualified as crowdfunding according to the EU

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	(i) project owners, which are any natural or legal person seeking funding for projects, consisting of one or a set of predefined operations aiming at a particular objective, including fundraising for a particular cause or event irrespective of whether these projects are proposed to the public or to a limited number of funders; with (ii) funders, which are any natural or legal person contributing to the funding of projects, through loans, with or without interest, or donations, including where such donations		Regulation, since the latter refers to the activity of “matching” while the proposed definition would include not only the matching but also the “facilitating of matching”. In our view this could broaden excessively the scope of application (eg. credit intermediaries as defined in the Consumer Credit Directive); - the proposed definition only refers to the matching or facilitating of matching of loans and in this way would not be able to catch providers of equity crowdfunding that do not fall under the EU Regulation 2020/1503. IE: (Comments): Not agreed. This Reg should only apply to CSFPs under Regulation (EU) 2020/1503 DE: (Comments): We support the insertion of a new definition of “third party financing intermediaries”.

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	entitle the donor to a non-material benefit.		LT: (Comments): The definition and scope is not clear
(15) ‘electronic money’ means electronic money as defined in Article 2, point (2) of Directive 2009/110/EC ⁵⁹ , but excluding monetary value as referred to in Article 1(4) and (5) of that Directive;	(15) ‘electronic money’ means electronic money as defined in Article 2, point (2) of Directive 2009/110/EC ⁶⁰ , but excluding monetary value as referred to in Article 1(4) and (5) of that Directive;		
(16) ‘business relationship’ means a business, professional or commercial relationship which is connected with the professional	(16) ‘business relationship’ means a business, professional or commercial relationship ~~which is~~ connected with the professional	To reflect changes in an Article 15(1)e was last part of definition removed.	IT: (Comments): We draw the attention on the importance of accurately defining the scope of application of AML

⁵⁹ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

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

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activities of an obliged entity and which is expected, at the time when the contact is established, to have an element of duration, including a relationship where an obliged entity is asked to form a company or set up a trust for its customer, whether or not the formation of the company or setting up of the trust is the only transaction carried out for that customer;	activities of an obliged entity, which is set up between an obliged entity and a customer, including in the absence of a written contract and which is expected to have , at the time when the contact is established, or which acquires to have an element of repetition or duration , ~~including a relationship where an obliged entity is asked to form a company or set up a trust for its customer, whether or not the formation of the company or setting up of the trust is the only transaction carried out for that customer;~~		obligations to introduce a level playing field. As we already stated in the past, it is important to clarify that only properly professional business relationship should be subject to AML obligations and not also relationships that are established for the obliged entity's own (e.g. organisational) needs, such as those with counterparties who are qualified as "suppliers" rather than "customers". In this regard, we deem that the addition of the clause "set up between an obliged entity and a customer" is redundant. On the contrary, it would be very useful to include a definition or a recital to clarify what falls under the wording "professional activities" (e.g. activities for which FIs were granted authorisation). We also note that it is unclear why a reference to the absence of "written contracts" would be required. On the contrary, this may create uncertainties (e.g. on what "written" actually means).

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			BE: (Comments): NBB: <u>As regard the suggestion aiming to extend the mandate of AMLA, in Article 15(5) AMLR, to develop RTS on the minimum criteria to be taken into account to identify business relationships</u>: We are generally concerned about the fact that the current text of the rulebook already refers to very many RTS, ITS and guidelines to be produced by AMLA, in a limited period of time, which risks impacting the degree of technical quality of the rules to be enacted. Therefore, we are not in favor of extending the mandate already given to AMLA for the development of RTS. Furthermore, the terms in the definition of “business relationship” referring to the repetition of the duration seem to us to be clear enough. Additionally and importantly, exclusion of the relation between an OE and its suppliers have huge consequences on the application of

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			the frameworks to traders in (high value) goods, especially art traders and precious metals and stones traders. The risk of money laundering in the trade of high value goods lie down especially in the supply chain. Gold, jewels and diamonds are used as currency for drugs trafficking and other criminals activities. For this reasons, EU Regulation 2017/821 on “conflict minerals » focus on the fully identification of the gold market supply chain. We have also seen art dealers selling stolen artworks or looted cultural goods and giving falsified origin to some of them. We consider that the obligations of this regulation should at least apply to the relations of OE like the traders in high value goods with their suppliers of such goods: cultural goods and precious metals and stones.

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			DK: (Comments): DK: We do not understand which provision this is referring to, as there is no art. 15 (1)e?
(17) ‘linked transactions’ means two or more transactions with either identical or similar origin and destination, over a specific period of time;	(17) ‘linked transactions’ means two or more transactions carried out with either identical or similar origin and destination, over a specific period of time, and which appear to have close characteristics such as similar purposes, amounts or other relevant characteristics, or which are carried out by or on behalf of a customers, originators or beneficiaries which are similar or have common characteristics;		SI: (Comments): We are not in favor of the use of the term “specific” as this implies an actual specified determination of the period of time that is relevant. In line with Article 15(5) only criteria for the identification of linked transaction will be subject of the RTS, and not specific time periods. We therefore propose to delete the word “specific” and leave it to “...<i>carried out over a ~~specific~~ period of time...</i>”. NL: (Comments):

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			The addition of specific characteristics can be troublesome for supervision, especially on the prohibition for cash transactions. We prefer to keep the definition as broad as possible. It is uncommon for traders to register names or beneficiaries of their customers. With the removal of the KYC requirements for traders in goods this is likely to increase. The characteristics given in this definition are almost all linked to the customer. Proving that a set of transactions is done with the same customer will be highly burdensome, if not impossible, for supervisors. It will be easy to circumvent these characteristics and hide linked transactions. Furthermore, although the list is not exhaustive, they may warrant an a contrario reasoning that other relevant characteristics not stated found by supervisors do not apply. We therefore propose to keep the definition as general as possible, and oblige AMLA to further specify the criteria for linked

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			transactions in an RTS, especially regarding cash (see drafting suggestion on 15(5)). This will be in line with the risk-based approach and offers the flexibility to address methods to circumvent the regulation. Drafting suggestion: (17) ‘linked transactions’ means two or more transactions carried out over a specific period of time, and which appear to have close characteristics or similarities such as similar customers, originators, beneficiaries, purposes, or amounts or other relevant characteristics, or which are carried out by or on behalf of a customer or beneficiaries which have common characteristics. IT: (Comments): We still do not support the definition of “linked transactions”, as suggested. It is crucial to us that criteria to identify such transactions are as objective as possible in order

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			to avoid operational uncertainties and divergent approaches. We are aware that the AMLA will further detail the criteria to identify linked transactions. Nonetheless, we believe that the definition in the L1 text should not include vague terms such as »similar« and should instead emphasize the significance of criteria such as transactions having a »common purpose« or that »can be tracked back to the same origin and destination«. Moreover, we believe that giving relevance to customers, originators or beneficiaries which are “similar or have common characteristics” excessively widens the scope of potential linked transactions without necessarily covering significant connections. BG: (Comments): OK, as long as “such as” implies that the characteristics listed in the definition are not exhaustive. DE: (Comments):

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			Beyond the situations mentioned in the definition, other links between transactions should also be covered such as the intention to execute the same transfer of funds, assets or property by more than one formal transaction. Whilst we strongly support the effort to specify the definition of linked transactions, we have doubts that the PCY amendments provide for a more precise wording. We believe that the RTS by AMLA is necessary to provide for the degree of specification needed for a directly applicable rule.
(18) ‘third country’ means any jurisdiction, independent state or autonomous territory that is not part of the European Union but that has its own AML/CFT legislation or enforcement regime;	(18) ‘third country’ means any jurisdiction, independent state or autonomous territory that is not part of the European Union ~~but~~ and that has its own AML/CFT legislation or enforcement regime;	Clarification of the text.	DE: (Comments): We support the clarification.

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(19) ‘correspondent relationship’ means:	(19) ‘correspondent relationship’ means:		
(a) the provision of banking services by one credit institution as the correspondent to another credit institution as the respondent, including providing a current or other liability account and related services, such as cash management, international funds transfers, cheque clearing, payable-through accounts and foreign exchange services;	(a) the provision of banking services by one credit institution as the correspondent to another credit institution as the respondent, including providing a current or other liability account and related services, such as cash management, international funds transfers, cheque clearing, payable-through accounts and foreign exchange services;		EE: (Comments): Financial services?
(b) the relationships between and among credit institutions and financial institutions including where similar services are provided	(b) the relationships between and among credit institutions and financial institutions including where similar services are provided		

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by a correspondent institution to a respondent institution, and including relationships established for securities transactions or funds transfers;	by a correspondent institution to a respondent institution, and including relationships established for securities transactions or funds transfers;		
(20) ‘shell bank’ means a credit institution or financial institution, or an institution that carries out activities equivalent to those carried out by credit institutions and financial institutions, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group;	(20) ‘shell bank’ means a credit institution or financial institution, or an institution that carries out activities equivalent to those carried out by credit institutions and financial institutions, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group;		

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(21) ‘Legal Entity Identifier’ means a unique alphanumeric reference code based on the ISO 17442 standard assigned to a legal entity;	(21) ‘Legal Entity Identifier’ means a unique alphanumeric reference code based on the ISO 17442 standard assigned to a legal entity;		
(22) ‘beneficial owner’ means any natural person who ultimately owns or controls a legal entity or express trust or similar legal arrangement, as well as any natural person on whose behalf or for the benefit of whom a transaction or activity is being conducted;	(22) ‘beneficial owner’ means : a) any natural person who ultimately owns or controls, according to articles 42 and to 43b of this regulation, a legal entity, ~~or an~~ express trust or a similar legal arrangement, or any other organisation that has legal capacity under national law as well as b) any natural person on whose behalf or for the benefit of whom a	To reflect insertion of new articles in chapter IV.	IT: (Comments): On letter a), we would welcome the introduction of definitions referring to “corporate entities”, “legal entities” and “legal persons” to better explain the scope of provisions regarding “beneficial ownership”. It could also be useful to explain how these interact with the wording in article 18 “other organisations that have legal capacity under national law” and possibly to merge/align these expressions. On letter b), we deem that for CDD purposes the persons on whose benefit a business relationship is initiated should also be considered

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	transaction or activity is being conducted;		as a BO (e.g. in the case of nominee arrangements or financial intermediaries purchasing fund's share/units in their own name but on behalf and pursuant to specific instructions from third parties, see EBA RFGL 16.20). In light of this we suggest the following redrafting: <i>b) any natural person on whose behalf or for the benefit of whom a business relationship or a transaction or activity is being conducted;</i> EE: (Comments): Henrik... BE: (Comments): NBB: As AML and prudential supervisor, the National bank of Belgium has recently identified a phenomenon deeply concerning, linked to the new trend which consists for payment services providers (PSP) in using IBANs in a non-traditional way.

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			The NBB has identified different kind of such business models, one of them being the following. Lets take as an example : - A Belgian PSP which is opening a Belgian payment account to another financial institutions located outside the EU - This account is a Master account, to which many virtual IBANs are linked (all are identified by BE IBANs) - The non-EU financial institution allocates/makes each virtual BE IBAN available to one of its own non-EU customers - To avoid having to comply with any CDD requirements relating to the end non-EU customers, the Belgian PSP argues that the customers of the non-EU financial institution does not qualify as being Beneficial Owners of the master account so that no information relating to

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			that end-user must be obtained. The press has also already identified that this business model can be used for fraudulent activities. The specificity of the situation is that there is currently no EU law relating to the use of the virtual IBANs to identify payment accounts; However, we believe that clarifying that when virtual IBANs are allocated/made available to third party beneficiaries, these beneficiaries of (the sub-accounts identified by) the virtual IBANs should be considered as the Beneficial Owners of the Master account and that sufficient due diligence should be exercised relating to that Beneficial Owner could already solve partly this issue. LV: (Comments):

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			We consider that the definition of “beneficial owner” is too narrow, although references to Articles 42, 43 of the Regulation are included which provided that BO is implemented through “ownership” and “control”, and also an explanation of the application of the criteria follows. We consider that the definition of control (types) must be included in the initial definition of BO. DK: (Comments): DK: We welcome the reference to Articles 42 and 43. The proposed Article 42a should also be included. DE: (Comments): The amendment (“or any other organisation that has legal capacity under national law”) should be deleted. The scope of BO should not be further widened.

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			MT: (Comments): MT is of the opinion that retaining the phrase ‘or for the benefit of whom’, is somewhat problematic especially within the context of transactions that may take place on an occasional basis within the context of payment services and especially money remittance. Transactions are often carried out for the benefit of a payee other than the payor and with whom the obliged entity would not have any connection. However, based on the definition of beneficial ownership as is being proposed, it would entail that the obliged entity would have to apply CDD measures with respect to the payee as well. MT would consider this as being problematic in terms of effective implementation of the resulting requirements.

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(23) ‘legal arrangement’ means an express trust or an arrangement which has a similar structure or function to an express trust, including <i>fiducie</i> and certain types of <i>Treuhand</i> and <i>fideicomiso</i> ;	(23) ‘legal arrangement’ means an express trust or an arrangement which has a similar structure or function to an express trust, including <i>fiducie</i> and certain types of <i>Treuhand</i> and <i>fideicomiso</i> ;		NL: (Comments): (23) ‘legal arrangement’ means an express trust or an legal arrangement which has a similar structure or function to an express trust, including <i>fiducie</i> and certain types of <i>Treuhand</i> and <i>fideicomiso</i> ; BG: (Comments): In the text of the Regulation proposal, the term “corporate and other legal entities” is used. A definition of this term, or alternatively a definition of the part “other legal entities” is necessary.
(24) ‘formal nominee arrangement’ means a contract or a formal arrangement with an equivalent legal value to a contract, between the nominee and the	(24) ‘formal nominee arrangement’ means a contract or a ~~formal similar~~ equivalent arrangement ~~with an equivalent legal value to a contract~~ , between		

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nominator, where the nominator is a legal entity or natural person that issues instructions to a nominee to act on their behalf in a certain capacity, including as a director or shareholder, and the nominee is a legal entity or natural person instructed by the nominator to act on their behalf;	~~the nominee a nominator and the nominator a nominee~~ , where the nominator is a legal entity or natural person that issues instructions to a nominee to act on their behalf in a certain capacity, including as a director or shareholder, and the nominee is a legal entity or natural person instructed by the nominator to act on their behalf;		
(25) ‘politically exposed person’ means a natural person who is or has been entrusted with the following prominent public functions:	(25) ‘politically exposed person’ means a natural person who is or has been entrusted with the following prominent public functions including :		NL: (Comments): (25) ‘politically exposed person’ means a natural person who is or has been entrusted with one or more of the following following prominent public functions including : Please stick to Commission’s proposal.

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			We do not agree with making the list under article 2(25) AMLR a non-exhaustive list and prefer to keep the Commission's proposal. Experience has shown that having a non-exhaustive list of prominent public functions can lead to uncertainty and debate about who is or isn't a PEP, and to derisking issues. The wording proposed by the Commission is sufficiently broad, contributes to harmonization and provide clarity to both PEPs and OEs. If there is fear that an exhaustive list might not be enough or might not be FATF-proof, we would suggest inserting the option of a delegated act in which additional prominent public functions can be mentioned. This would give the flexibility some Member States desire while providing the much-needed clarity to prevent unjustified derisking of persons. BE: (Comments): NBB: replace "including by "for instance". Otherwise, the approach is not risk based any more but a "tick-the-box" approach.
(a) in a Member State:	(a) in a Member State:		

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(i) heads of State, heads of government, ministers and deputy or assistant ministers;	(i) heads of State, heads of government, ministers and deputy or assistant ministers;		
(ii) members of parliament or of similar legislative bodies;	(ii) members of parliament or of similar legislative bodies;		
(iii) members of the governing bodies of political parties;	(iii) members of the governing bodies of political parties;		AT: (Comments): Fatal flaw comment: The definition refers to “members of parliament or of similar legislative bodies”. Austria has more than 1 000 political parties, but less than a dozen are represented in parliament or similar legislative bodies. The present proposal would entail an enormous expansion of PEPs who don’t have any corresponding political influence. We think that other Member States would have the same problem. Therefore we suggest the following wording:

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			“(iii) members of the governing bodies of political parties <u>represented in parliament or similar legislative bodies</u> ”.
(iv) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances;	(iv) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances;		
(v) members of courts of auditors or of the boards of central banks;	(v) members of courts of auditors or of the boards of central banks;		
(vi) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;	(vi) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;		

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(vii) members of the administrative, management or supervisory bodies of State-owned enterprises;	(vii) members of the administrative, management or supervisory bodies of ~~State-owned~~ enterprises majoritly owned by State or local authorities;		NL: (Comments): We prefer the Commission's proposal here. <i>(vii) members of the administrative, management or supervisory bodies of State-owned enterprises</i> BE: (Comments): NBB: we would like to see a reference to the regional level also -> "<i>majoritly owned by State, regional or local authorities;</i>" Combined with the fist sentence of para 25, only persons <u>entrusted with prominent public functions, among those refered to in point (vii), should be considered as PEPs</u>, not all of them (contrary to what was said by some MS during 10/10 WP). Replacing the word "including" in the first sentence of para 25 by "for instance" allow to reintroduce the risk based approach: OEs will have the obligation <u>to asses the risk presented by the potentiel PEP before classifying him as such.</u>

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			DE: (Comments): We explicitly do <u>not</u> support the suggested changes in the definition of PeP when it comes to widening the definition to also include companies owned by local authorities. Companies in which there is a stake at municipal/local level should be excluded for the following reasons: 1. Only by excluding the municipal/local level we can achieve comparability with other pep categories, which as a whole only target top-level state institutions and do not cover local level (e.g. mayors of small cities and judges at local level are not to be qualified as peps). 2. Obligated entities will still be able to apply enhanced due diligence requirements if their risk assessment has proven the need even if a person is not a pep.

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			3. Due to a high amount of local owned state enterprises (waste and water suppliers) the number of peps would vastly increase without exhibiting corresponding risks. A restrictive approach – this entails explicitly excluding local authorities - to the understanding of “state owned enterprise” is very important to us due to our experience from the practice: Board members of state-owned companies often approach us with the problem that their credit institutions end their business relationship due to their pep-status. Such board members of state-owned enterprises are often volunteering in their positions without monetary compensation and resign/announce their intention to resign their mandates as a consequence of their pep-status. In addition, we advocate for another restrictive criterion that we have introduced at national level to define the concept of state-owned

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			companies in a risk-oriented manner: We require that a company must have at least 2000 employees or, alternatively, an annual turnover of 3 billion to fall under the term “state owned enterprise”. Please see our drafting suggestion for Art. 33 AMLR.
	(viii) other prominent public functions provided for by Member States;		NL: (Comments): In our opinion this addition would only make sense if the list were made exhaustive and though this point (viii) provide MS the opportunity to add any prominent public functions.
(b) in an international organisation:	(b) in an international organisation:		
(i) the highest ranking official, his/her deputies and members of the board or equivalent function of an international organisation;	(i) the highest ranking official, his/her deputies and members of the board or equivalent function of an international organisation;		

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(ii) representatives to a Member State or to the Union;	(ii) representatives to a Member State or to the Union;		NL: (Comments): What is meant here? Is this not already covered by (i)? (ii) representatives to a Member State or to the Union
(c) at Union level:	(c) at Union level:		
(i) functions at the level of Union institutions and bodies that are equivalent to those listed in points (a)(i), (ii), (iv), (v) and (vi);	(i) functions at the level of Union institutions and bodies that are equivalent to those listed in points (a)(i), (ii), (iv), (v) and (vi);		
(d) in a third country:	(d) in a third country:		
(i) functions that are equivalent to those listed in point (a);	(i) functions that are equivalent to those listed in point (a);		

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	No public function referred to in points (a) to (d) shall be understood as covering middle-ranking or more junior officials;		NL: (Comments): We agree.
(26) 'family members' means:	(26) 'family members' means:		BG: (Comments): Suggestion to add the possibility for MS to expand the list of categories as the one provided for 'politically exposed persons'? Drafting suggestion: ADD <i>(d) other categories of family members provided for by Member States;</i>
(a) the spouse, or the person in a registered partnership or civil union or in a similar arrangement;	(a) the spouse, or the person in a registered partnership or civil union or in a similar arrangement;		

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(b) the children and the spouses of, or persons in a registered partnership or civil union or in a similar arrangement with, those children;	(b) the children and the spouses of, or persons in a registered partnership or civil union or in a similar arrangement with, those children;		
(c) the parents;	(c) the parents;		
(27) ‘persons known to be close associates’ means:	(27) ‘persons known to be close associates’ means:		BG: (Comments): The same comment as regards and ‘family members’. MS should have the ability to include additional categories of persons through their national legislation. Drafting suggestion: ADD (c) <i>other categories of close associates provided for by Member States;</i>

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(a) natural persons who are known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a politically exposed person;	(a) natural persons who are known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a politically exposed person;		
(b) natural persons who have sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the de facto benefit of a politically exposed person;	(b) natural persons who have sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the de facto benefit of a politically exposed person;		
(28) 'senior management' means, in addition to executive members of the board of directors or, if there is no board, of its equivalent governing body, an	(28) 'senior management' means, in addition to ~~the executive~~ members of the ~~board of directors~~ or, ~~if there is no board,~~ of its equivalent governing body	Technical amendment.	

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officer or employee with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to take decisions affecting its risk exposure;	management body in its management function , an officer or employee with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to take decisions affecting its risk exposure;		
(29) 'group' means a group of undertakings which consists of a parent undertaking, its subsidiaries, and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 22 of Directive	(29) 'group' means a group of undertakings which consists of a parent undertaking, its subsidiaries, and the entities ~~in which~~ directly or indirectly linked with the parent undertaking or its subsidiaries by a relationship as set out in ~~hold a participation, as well as undertakings linked to each~~		NL: (Comments): The word "linked" is too vague. (29) 'group' means a group of undertakings which consists of a parent undertaking, its subsidiaries, and the entities ~~in which~~ directly or indirectly controlled by the parent undertaking or its subsidiaries by a relationship as set out in ~~hold a participation, as well as~~

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2013/34/EU of the European Parliament and of the Council ⁶¹ ;	~~other by a relationship within the meaning of~~ Article 22 of Directive 2013/34/EU of the European Parliament and of the Council ⁶² , including branches, where applicable, entities permanently affiliated to a central body;		~~<u>undertakings linked to each other by a relationship within the meaning of</u>~~ Article 22 of Directive 2013/34/EU of the European Parliament and of the Council ⁶³ ; <u>including branches, where applicable, entities permanently affiliated to a central body;</u> BE: (Comments): NBB: If a “parent undertaking” is not a “fully fledged” obliged entity, the legal requirements posed on it should be clearly determined and delimited and it should be explicitly submitted to the supervisory powers of a well identified supervisory authority.

⁶¹ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 1).

⁶² Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 1).

⁶³ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 1).

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			ES: (Comments): We agree to limit the definition to those cases where the parent undertaking exercises control, directly or indirectly, over entities. However, we suggest clarifying that from AML/CFT perspective, Group: • Only encompasses those group's entities that are obliged entities, which should AML/CFT group-wide policies, procedures and controls. However, this scope does not prevent the exchange of information between all group entities, whether or not they are obliged entities as it is set out in article 13 AMLR. • Should include 3rd country subsidiaries and/or branches considered as obliged entities according to EU AML/CFT legal framework, even if they are not obliged entities according to its 3rd country national legislation.

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			See below our drafting suggestion: <i><u>‘AML/CFT group’ means a group of undertakings which consists of a parent undertaking, its subsidiaries, and the entities, which are obliged entities under article 3 of this Regulation, directly or indirectly linked with the parent undertaking or its subsidiaries by a relationship as set out in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council , including branches, where applicable, entities permanently affiliated to a central body; and third country subsidiaries and branches which are obliged entities according EU AML/CFT legal framework, regardless if they are not obliged entities according to its third country national legislation.</u></i> Additionally, we would suggest to include here the definition of branch and subsidiary, reproducing in the Directive 2013/34/EU and the Regulation (EU) 2013/575 even

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			though referred there to financial institutions. DK: (Comments): DK: We find that the new amendments could be misunderstood as a widening of the group definition, when the terms directly or indirectly linked are used. These terms are not used when groups are defined in Directive 2013/34/EU and therefore could be seen as widening the definition. We therefore suggest changing the wording back to the initial wording, i.e. keeping “in which” and deleting “directly or indirectly linked with”. (If no change is intended, then the definition from AMLDIV could be used). BG: (Comments): Should ‘subgroup’ be defined as well? DE:

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			(Comments): We agree with the definition of “group”. In this context we would like to mention that we could not support any definition of group that limits the understanding of undertakings belonging to a group to such undertakings that are majority-owned or otherwise controlled.
	(29a) ‘parent undertaking’ means:		SI: (Comments): We generally agree with the inclusion of the proposed definition of parent undertakings. Nevertheless, there might be a gap with regard to groups that have a parent undertaking in a third country (and not in the Union) and it is not clear, which undertaking ensures group wide implementation of policies and procedures within the Union. Further with regard to groups that have two parent undertakings at the same level within the Union this definition as

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			well may not give the answer to determine the relevant parent undertaking ensuring group wide requirements. In these more complex cases it needs to be clear, how the relevant parent undertaking will be determined. NL: (Comments): We believe that there should be a possibility to appoint an entity which is not at the highest level of consolidation as parent entity. This should be reflected in the definition of "parent undertaking". Also, because there is no "ranking" between the options mentioned in this definition, it is possible that more than one parent undertaking will pop up. This can cause issues with regard to which supervisor is responsible for supervision. Therefore, we believe that the possibility for supervisor to appoint an entity as parent undertaking should be used as an explicit fallback option in this definition. Please see text suggestion below. IT: (Comments):

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			<u>We strongly disagree</u> with the definition proposed by the PCY when several parent undertakings are identified within the same group, as it would lead to identify a commercial entity as a parent undertaking, when it is not a subsidiary of another undertaking in the Union. Instead, in our view, <u>the parent undertaking should always be the company that is appointed as a prudential parent undertaking, according to EU sectoral prudential legislation.</u> To this regard, we hereby fully recall the position we expressed during the last working parties: - When there is a prudential group, the parent undertakings relevant for AML purposes should be the same defined under EU sectoral prudential legislation. Please note that, in the banking sector, when the parent undertaking is a (mixed) financial holding company, head of the group for the

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			purposes of group governance is the (mixed) financial holding company that has received approval under Article 21a CRD. - When there is just an accounting group consisting of financial intermediaries, relevant parent undertakings of the groups should just be other financial intermediaries, or holding companies the subsidiaries of which are exclusively or mainly financial intermediaries; - When there is just an accounting group consisting of commercial entities that are obliged entities, relevant parent undertakings of the groups should just be other commercial entities that are obliged entities, or holding companies the subsidiaries of which are exclusively or mainly commercial entities which are obliged entities. DE: (Comments):

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			In this context we would like to refer to our extensive comments on group-wide policies in Art. 13 AMLR.
	i) a parent undertaking of a financial conglomerate as defined in Article 2, point (14) of the Directive ~~No~~ 2002/87/CE, including a 'mixed financial holding company' as defined in Article 2, point (15) of the Directive No 2002/87/CE same article;	Technical amendment.	<u>NL:</u> <u>(Comments):</u> <u>i) A parent undertaking of a financial conglomerate as defined in Article 2, point (14) of the Directive No 2002/87/CEEC at the highest level of prudential consolidation in the Union, including a 'mixed financial holding company' as defined in Article 2, point (15) of the Directive No 2002/87/CE same article;</u> BG: (Comments): there is already a definition in Directive 2013/34. How would they relate to each other given that there is reference to that Directive in the definition of 'group'?

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	ii) a parent undertaking of a group, other than that mentioned in point (a), which is subject to prudential supervision on a consolidated basis, at the highest level of prudential consolidation in the Union, including a 'financial holding company' as defined in Article 4(1), point (20), of Regulation (EU) No 575/2013, an 'investment holding company' as defined in Article 4 paragraph 1, point 23, of Regulation (EU) No 2019/2033 and an 'insurance holding company' as defined in Article 212(1), point (f), of Directive 2009/138/EC;	Technical amendment.	DK: (Comments): DK: We do not understand what (a) is referring to?

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	iii) a parent undertaking of a group within the meaning of Article 2 (29) of this Regulation, other than those mentioned in points (a) and (b), which includes at least two obliged entities as defined in Article 3 of this Regulation, and which is not itself a subsidiary of another undertaking in the Union.	Technical amendment.	NL: (Comments): <u>iii) A parent undertaking of a group within the meaning of Article 2 (29) of this Regulation, other than those mentioned in points (a) and (b), which includes at least two obliged entities as defined in Article 3 of this Regulation, and which is not itself a subsidiary of another undertaking in the Union; or d) a parent undertaking appointed in accordance with article 13(2a) of this Regulation.</u> DK: (Comments): DK: We do not understand what (a) and (b) is referring to?
	When several parent undertakings are identified within the same group, in accordance with the criteria mentioned above, the parent undertaking is the entity within		NL: (Comments): <u>When several parent undertakings are identified within the same group, in accordance with the criteria mentioned above under points a, b or c, the parent undertaking is the entity within the group which is not itself a subsidiary of another undertaking</u>

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	the group which is not itself a subsidiary of another undertaking in the Union.		<u>in the Union or the entity referred to under point d.</u>
(30) ‘cash’ means currency, bearer-negotiable instruments, commodities used as highly-liquid stores of value and prepaid cards, as defined in Article 2(1), points (c) to (f) of Regulation (EU) 2018/1672 of the European Parliament and of the Council ⁶⁴ ;	(30) ‘cash’ means currency, bearer-negotiable instruments, commodities used as highly-liquid stores of value and prepaid cards, as defined in Article 2(1), points (c) to (f) of Regulation (EU) 2018/1672 of the European Parliament and of the Council ⁶⁵ ;		IT: (Comments): The definition of ‘cash’ is strictly linked to Art. 59 of the AMLR, according to which persons trading in goods or providing services may accept a payment in cash only up to an amount of Eur 10 000 (or equivalent in other currency). We wonder if a mechanism is needed to determine the value of “cash” items such as highly liquid stores of value (e.g. precious metals or other items) at the moment when the transaction is carried out or requested.

⁶⁴ Regulation (EU) 2018/1672 of the European Parliament and of the Council of 23 October 2018 on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005 (OJ L 284, 12.11.2018, p. 6).

⁶⁵ Regulation (EU) 2018/1672 of the European Parliament and of the Council of 23 October 2018 on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005 (OJ L 284, 12.11.2018, p. 6).

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			BE: (Comments): According to the definition in project, cash includes gold bars : these are considered as ‘commodity used as a highly-liquid store of value’ according to Regulation (EU) 2018/1672, art. 2 (1) €, referring to annex 1, point 1. Question: Is selling or buying gold bars, considered as a cash payment, even if the counterpart is paid by bank? If yes, is it still allowed to buy or sell gold bars? This should be clarified DE: (Comments): The proposed definition of cash goes clearly beyond a common linguistic understanding. This is of particular concern given that Article 59 provides for a prohibition of large transactions. Such prohibitions addressed to a larger, not legally trained audience should be sufficiently clear in the wording.

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(31) 'competent authority' means:	(31) 'competent authority' means:		IT: (Comments): According to the FATF Recommendations, we suggest to include in the scope of 'competent authority' those that receive reports on cross-border transportations of currency and bearer negotiable instruments.
(a) a Financial Intelligence Unit;	(a) a Financial Intelligence Unit;		IT: (Comments): (a) ~~the~~ a Financial Intelligence Unit; Technial amendment to reflect the fact that, different from supervisors and other competent authorities, there is only one FIU in each Member State.
(b) a supervisory authority as defined under point (33);	(b) a supervisory authority as defined under point (33);		

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(c) a public authority that has the function of investigating or prosecuting money laundering, its predicate offences or terrorist financing, or that has the function of tracing, seizing or freezing and confiscating criminal assets;	(c) a public authority that has the function of investigating or prosecuting money laundering, its predicate offences or terrorist financing, or that has the function of tracing, seizing or freezing and confiscating criminal assets;		IT: (Comments): “a public authority that has the function of investigating ~~or~~ and prosecuting money laundering, its predicate offences or terrorist financing, ~~or~~ and that has the function of tracing, seizing, or freezing and confiscating criminal assets”.
(d) a public authority with designated responsibilities for combating money laundering or terrorist financing;	(d) a public authority with designated responsibilities for combating money laundering or terrorist financing;		IT: (Comments): “a public authority with designated responsibilities for preventing ~~combating~~ money laundering or terrorist financing”.
(32) ‘supervisor’ means the body entrusted with responsibilities	(32) ‘supervisor’ means the body entrusted with responsibilities		BE: (Comments):

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aimed at ensuring compliance by obliged entities with the requirements of this Regulation, including the Authority for anti-money laundering and countering the financing of terrorism (AMLA) when performing the tasks entrusted on it in Article 5(2) of Regulation <i>[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]</i> ;	aimed at ensuring compliance by obliged entities with the requirements of this Regulation, including the Authority for anti-money laundering and countering the financing of terrorism (AMLA) when performing the tasks entrusted on it in Article 5(2) of Regulation <i>[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]</i> ;		NBB: we understood from the explanation given by the Commission that: - ‘Supervisor’ = independent supervisors (including financial supervisors), administrative supervisors of SRB + SRB. - ‘Supervisory authority’ = ‘supervisor’ - SRB - ‘SRB’ = SRB Taking also into account the definition of “financial supervisor” in Article 2(1) AMLD6, we suggest the following new definitions, aiming to clarify the meaning of these notions: ▪ <u>Art. 2 AMLR:</u> “(32) ‘supervisor’ means ~~the~~ the body entrusted with responsibilities aimed at ensuring compliance by obliged entities with the requirements of this Regulation, including a self-regulatory body and the Authority for anti-

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			~~money laundering and countering the financing of terrorism (AMLA) when performing the tasks entrusted on it in Article 5(2) of Regulation~~ [please insert reference ~~proposal for establishment of an Anti-Money Laundering Authority~~ COM/2021/421 final]; <u>(a) a supervisory authority as defined under point (33);</u> <u>(b) a self-regulatory body as defined under point (34);</u> (same structure as in definition of ‘competent authority’ in (31)) (= supervisory authorities + SRBs) “(33) ‘supervisory authority’: means a ~~“supervisor” who is a~~

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			public body <u>entrusted with responsibilities aimed at ensuring compliance by obliged entities with the requirements of this Regulation, including financial supervisory authorities established as independent non-governmental authorities with statutory powers, the Authority for anti-money laundering and countering the financing of terrorism (AMLA) when performing the tasks entrusted on it in Article 5(2) of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final], or the public authority overseeing self-regulatory bodies in their performance of supervisory functions pursuant to Article 29 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final] ”</u> (= non-financial AML NCAs, financial AML NCAs, AMLA + administrative supervisors of SRBs)

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			(for the definition of “financial supervisory authority”, see below) “(34) “Self-regulatory body”: means a body that represents members of a profession and has a role in regulating them, in performing certain supervisory or monitoring functions and in ensuring the enforcement of the rules relating to them;” (unchanged) (= SRBs) ▪ <u>Art. 2(1) AMLD6 :</u> “(1) ‘<u>AML/CFT</u> financial supervisory <u>authority</u>’ means a supervisory <u>authority as defined under article 2 (33) of the AMLR</u> in charge of <u>supervision over credit and financial institutions</u>;” (We guess the Commission wanted to refer here to the financial AML NCAs' but not the AMLA. But, referring to the notion of 'financial supervisor' , which is larger than 'financial supervisory authority' as it includes also administrative supervisors of

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			SRBs + SRBs, does not make sense here as for the financial sector, the responsibilities aimed at ensuring compliance by credit or financial institutions with the requirements of AMLR will never be exercised by a SRB -> it would be more precise and focused to use the notion 'financial supervisory <u>authority</u>'. Furthermore, the addition of 'AML/CFT' before 'financial supervisory authority' would permit to make a clear distinction with financial NCAs supervising compliance with prudential requirements.) Finally, we strongly believe that the same concepts should be used in AMLR and AMLD.
(33) 'supervisory authority' means a supervisor who is a public body, or the public authority overseeing self-regulatory bodies in their performance of supervisory	(33) 'supervisory authority' means a supervisor who is a public body, or the public authority overseeing self-regulatory bodies in their performance of supervisory		

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functions pursuant to Article 29 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> ;	functions pursuant to Article 29 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> ;		
(34) ‘self-regulatory body’ means a body that represents members of a profession and has a role in regulating them, in performing certain supervisory or monitoring functions and in ensuring the enforcement of the rules relating to them;	(34) ‘self-regulatory body’ means a body that represents members of a profession and has a role in regulating them, in performing certain supervisory or monitoring functions and in ensuring the enforcement of the rules relating to them;		
(35) ‘targeted financial sanctions’ means both asset freezing and prohibitions to make funds or other assets available,	(35) ‘targeted financial sanctions’ means both asset freezing and prohibitions to make funds or other assets available,		

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directly or indirectly, for the benefit of designated persons and entities pursuant to Council Decisions adopted on the basis of Article 29 of the Treaty on European Union and Council Regulations adopted on the basis of Article 215 of the Treaty on the Functioning of the European Union;	directly or indirectly, for the benefit of designated persons and entities pursuant to Council Decisions adopted on the basis of Article 29 of the Treaty on European Union and Council Regulations adopted on the basis of Article 215 of the Treaty on the Functioning of the European Union;		
(36) ‘proliferation financing-related targeted financial sanctions’ means those targeted financial sanctions referred to in point (35) that are imposed pursuant to Council Decision (CFSP) 2016/849 and Council Decision 2010/413/CFSP and pursuant to Council Regulation (EU)	(36) ‘proliferation financing-related targeted financial sanctions’ means those targeted financial sanctions referred to in point (35) that are imposed pursuant to Council Decision (CFSP) 2016/849 and Council Decision 2010/413/CFSP and pursuant to Council Regulation (EU)		

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2017/1509 and Council Regulation (EU) 267/2012.	2017/1509 and Council Regulation (EU) 267/2012.		
	(37) ‘precious metal and stone’ means metals and stones referred to in annex X; (...) « Annex X Precious metals referred to in article 2 (X) of this regulation include at least : ○ Gold ○ Silver ○ Platinum ○ Iridium ○ Osmium ○ Palladium ○ Rhodium		BE: (Comments): 1. this definition leads to a legal uncertainty for persons trading goods “containing” precious metals in small quantities, e.g. for their physical properties. All the metals listed in article 2 (38) are used in industrial production. It is not clear that a trader of industrial goods “containing” precious metals in small quantities : - is or is not a OE according to the proposed definition. - is or is not a client of a OE trading precious metals 2. We notice that “Rhutenium” must be written “Ruthenium”. 3. We wonder how the listed metals were selected by the Presidency.

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	○ Rhutenium Precious stones refered to in article 2 (X) of this regulation include at least : ○ Diamond ○ Ruby ○ Sapphire ○ Emerald »		All these metals are used in the production of industrial goods and some of them seems not the be used in jewelry . Obliging the traders of all this metals can lead to serious consequences for the traders on the (international) metal market for industrial application and consequently for the EU industry and especially technological one. The goal of this new category is to prevent that precious metals are used by criminals to perform ML. There are strong evidence that gold, silver and precious stones are used for this purpose. we wonder if similar evidence exists for the other listed metals. The high value of a goods is one of the factors who increase the risk of ML but this factor alone is not sufficient enough. Gold, silver and precious stones benefits of a large worldwide market with a significant number of buyers and sellers of all sizes (consumers included) and not only industrial

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			one. The use in jewelry seems also to be a significant risk factor. We think that selecting the in scope metals others than gold and silver should be submit to a risk and impact analysis. 4. cf comment about “business relationship” DE: (Comments): With the current, very extensive list we do not see any need to open the list to include additional metals. <u>Drafting suggestion:</u> <i>Precious metals referred to in article 2 (X) of this regulation include ~~at least~~ :</i> <i>Precious stones referred to in article 2 (X) of this regulation include ~~at least~~ :</i> MT: (Comments): While MT acknowledges that the current list is open ended, in view of

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			concerns raised that the full scope of application needs to be identified within the regulation (thereby possibly rendering this list exhaustive), MT would suggest including products of vegetal or animal origin such as amber, coral, mother-of-pearl and pearls whose trade may present opportunities for ML/FT.
	(38) ‘cultural good’ means a good mentioned in part A of the annex to Regulation 2019/880.		DE: (Comments): We explicitly welcome the clarification as to what annex we refer to.
	(39) ‘Management body’ means an obliged entity’s body or bodies, which are appointed in accordance with national law, which are empowered to set the obliged entity's strategy, objectives and overall direction,		DK: (Comments): DK: We welcome the clarification of management bodies.

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	and which oversee and monitor management decision-making, and include the persons who effectively direct the business of the obliged entity. Where no body exists, the management body is the person who effectively direct the business of the obliged entity.		
	(40) ‘Management body in its management function’ means the management body responsible for the day-to-day management of the obliged entity.		DK: (Comments): DK: We welcome the clarification of management bodies.
	(41) ‘Management body in its supervisory function’ means the management body acting in its		DK: (Comments): DK:

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	role of overseeing and monitoring management decision-making.		We welcome the clarification of management bodies. DE: (Comments): A two tier system should be reflected here. We suggest to include the following wording at the end of the sentence: "...or the supervisory board."
	(42) 'partnership for information sharing in AML/CFT field' means a formal cooperation established under national law between obliged entities with the purpose of supplementing compliance with this Regulation through cooperation and by sharing and processing data, in particular through the use of new	To reflect WP of 15.9.2022. As proposed in questionnaire following this WP, the term joint utility was replaced by term "partnership". The definition remains general and focused on the purpose of the cooperation, so that it can accommodate various forms that are already in place in MS.	HR: (Comments): HR We support the term "partnership". Furthermore, we repeat our previous comment that a common EU framework for OEs information sharing should be created based on the results of the best practice analysis. The current situation regarding OEs information sharing varies between MS and the results of practical cases must be a guide for further defining OEs information sharing, bearing in

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	technologies and artificial intelligence.		mind the specificities of different OEs. In addition, it is necessary to initiate a discussion on the wider exchange of information between OEs (i.e. the banking and non-banking financial industry). Our opinion is that an information-sharing framework should be created at the EU level and based on the results of the above-mentioned analysis and discussions and it should cover common criteria and definitions. See further comments on Art 55 and 55a. IT: (Comments): We disagree with the proposal to introduce such “partnership” as entities entrusted with “compliance” and “cooperation”. Please see comments under article 54. In addition, we observe that “supplementing compliance”, while being a vague notion, may not be a

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			task allowed under the restrictions and conditions governing outsourcing (see comments under article 6a). EE: (Comments): EE Comment. We are a bit concerned with the use of word “established” as this would normally mean an establishment of (legal person, branch) under the national laws of MS. From the discussions in the WG we understood that the partnerships could in near future benefit from cross-border reach between different MS, so we would leave this opportunity in the text, if agreed by the PCY. We suggest to leave it out, so the definition would read: ‘partnership for information sharing in AML/CFT field’ means a cooperation formalised under national law or laws of Member States between obliged entities and/or competent authorities with

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			the purpose of supplementing compliance with this Regulation through cooperation and by sharing and processing data, in particular through the use of new technologies and artificial intelligence <u>provided by themselves or by third party service providers.</u> AT: (Comments): The exchange of personal data between different obliged entities and automated data processing carried out thereafter result in a huge pool of data that can subsequently be checked by automated data processing or AI. The provisions are not specific enough, are too broad and far-reaching. It should be ensured that the provisions of Article 22 of the GDPR are complied with in relation to automated data processing and profiling; this doesn't seem to be the case. Further, the data exchange within partnerships as defined here

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			enables big data pools and it is not really clear under which circumstances the data exchange is allowed or prohibited. We propose to remove “under national law” to allow AMLA to organise partnerships for cooperation. Please compare our comments to Art. 54 and 55. BE: (Comments): NBB: Read in combination with new article 55a para 1, this definition is inconsistent ES: (Comments): We welcome this proposal while bearing in mind that the same standards of protection in all jurisdictions of the EU should be guaranteed However, we consider that the regulation of these ‘<i>partnership for information sharing in AML/CFT field</i>’ should be harmonised at EU level instead of being established

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			under national law. Otherwise, national law inequalities could create obstacles that would make its practical application, among obliged entities across different countries, ineffective. If, notwithstanding, the framework for these partnerships is to be established at national level, it should be ensured that these national systems could interoperate. Please consider running a data protection impact assessment as part of the general impact assessment preceding the adoption of the legal act in line with article 39(10) EUDPR/35(10) GDPR. Also, please consider further concretion (e.g in the RTS to be defined by AMLA) on how these partnership would work in practice (roles and responsibilities of parties involved, exchange scenarios, potential recipients, categories of personal data, technical and organisational measures) to ensure accuracy and confidentiality of the personal data.

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			DE: (Comments): We kindly ask for the deletion of the last half sentence (“in particular through the use of new technologies and artificial intelligence). The objective of “joint utilities” is mainly, that data can be shared not only between single OEs depending on a case by case assessment but between all OEs that are organized within such a partnership. This leads to an increased number of recipients but does not necessarily affect the way that such data is processed. The latter depends on the concrete implementation within national law while data protection requirements must be fully respected. Against this background, it should not be specified at this point, how data processing within such partnerships may look like. MT: (Comments):

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			While MT supports including a definition of ‘partnership for information sharing in the AML/CFT field’, MT proposes the following amendments in order to ensure that it is the prerogative of the MS whether or not to allow the establishment of such partnerships: ‘partnership for information sharing in the AML/CFT field’ means a formal cooperation mechanism which, where permissible, is established under national law between obliged entities with the purpose of supplementing compliance with this Regulation through cooperation and by sharing and processing data, in particular through the use of new technologies and artificial intelligence.
Section 2	Section 2		
Scope	Scope		

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Article 3	Article 3		
Obligated entities	Obligated entities		IT: (Comments): On December 2021 the Secondary Market Directive entered into force. The Directive intends to regulate the sale, purchase and servicing of non-performing loans originated by EU banks. We believe that this gives us the chance to have a general discussion on the AML regime to which these activities should be subject. More specifically, we would like to gather the views of delegations/COM/PCY on the opportunity to include credit servicers among the obliged entities in the AMLR proposal.

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The following entities are to be considered obliged entities for the purposes of this Regulation:	The following entities are to be considered obliged entities for the purposes of this Regulation:		IT: (Comments): We draw the attention on the importance of accurately defining the scope of application of AML obligations to introduce a level playing field. We wonder why the clause aimed at limiting the application of the AMLR to OEs “<i>acting in the exercise of their professional activities</i>” is referred only to OEs other than credit and financial institutions. As matter of fact, also credit and financial institutions fall under the scope of the AMLR only when offering products and services in the exercise of their professional activity (mainly the activity for which they have been authorized) and not when they act for their own (e.g. organisational) purposes. In order to make this clear we suggest to: (i) include in number 1 and 2 an explicit reference to the exercise of professional activity, such as it is provided in number 3,

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			(ii) provide a definition of “professional activity”. BE: (Comments): NBB: we suggest to clarify that AML obligations apply only to that part of the activities of the obliged entities that cause said entities to qualify as obliged entities. Indeed, when a payment service provider (“PSP”, ie credit institutions, payment institutions or e-money institutions) is providing payment services (or issuing e-money) using the limited network exemption (as defined under PSD II), this activity is not subject to the PSD II regime. In this case, PSPs must distinguish between their regulated activities and the excluded activity. The question is whether or not the obligations of the AMLR also apply to PSPs regarding this excluded activity. ➔ Belgian AML law specifically clarifies that it applies to obliged entities, “in so far they

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			act in the exercise of their professional regulated activities”. The reference to “regulated” activities is important because by nature, all activities of a legal entity qualify as its “professional activity” (which may not be the case with a natural person). If it is the intention, the heading of Article 3 should be completed as follows: “The following entities are to be considered obliged entities for the purposes of this Regulation, when acting in the exercise of their professional regulated activities”. Alternatively, article 3, (1) and (2) could be amended as follows: (1) credit institutions, <u>when acting in the exercise of their professional regulated activities</u> financial institutions, <u>when acting in the exercise of their professional regulated activities</u>”.

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(1) credit institutions;	(1) credit institutions;		
(2) financial institutions;	(2) financial institutions;		BE: (Comments): ;
(3) the following natural or legal persons acting in the exercise of their professional activities:	(3) the following natural or legal persons acting in the exercise of their professional activities:		
(a) auditors, external accountants and tax advisors, and any other natural or legal person that undertakes to provide, directly or by means of other persons to which that other person is related, material aid, assistance or advice on tax matters as principal business or professional activity;	(a) auditors, external accountants and tax advisors, and any other natural or legal person including independent legal professionals such as lawyers , that undertakes to provide, directly or by means of other persons to which that other person is related, material aid, assistance or advice on tax matters		NL: (Comments): We propose deleting the words " <i>as principal business or professional activity</i> " because this leads to some confusion as to whom should fall within this category of obliged entities. Also, this is (for good reasons) not required for any of the other categories of obliged entities AT: (Comments): This provision still includes the reference to legal professionals, i.e.

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	as principal business or professional activity;		that legal professionals may qualify as auditors. The difficulties relating to the application of “material aid, assistance or advice on tax matters as principal business or professional activity” which is an unclear criterion is obvious. Moreover, it is unclear how different professional duties (in particular as regards legal privilege) apply if the lawyer is considered to be an auditor/accountant for the purpose of the AMLR. DE: (Comments): German registered associations that provide legal advice on income tax matters should fall out of the scope of AML/CTF requirements. Provided for in the tax advice code, these associations are organized in the form of self-help association of nationale employees, are allowed to give advice only on income tax matters and do not provide services with a commercial focus. No material AML/CTF risks have been

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			identified in the NRA. We do not consider adequate to subject these associations to AML/CFT requirements. <u>Drafting suggestion:</u> (a) auditors, external accountants and tax advisors, and any other natural or legal person that undertakes to provide, directly or by means of other persons to which that other person is related, material aid, assistance or advice on tax matters as principal business or professional activity with the exception of mutual advice and assistance of national employees on tax matters organized in the form of a self-help association.
(b) notaries and other independent legal professionals, where they participate, whether by acting on behalf of and for their client in any financial or real estate transaction,	(b) notaries, lawyers and other independent legal professionals, where they participate, whether by acting on behalf of and for their client in any financial or real estate		FI: (Comments): We have concerns with the broad definition of legal professionals, we think it could lead to legal uncertainty.

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or by assisting in the planning or carrying out of transactions for their client concerning any of the following:	transaction, or by assisting in the planning or carrying out of transactions for their client concerning any of the following:		
(i) buying and selling of real property or business entities;	(i) buying and selling of real property or business entities;		
(ii) managing of client money, securities or other assets;	(ii) managing of client money, securities or other assets;		
(iii) opening or management of bank, savings or securities accounts;	(iii) opening or management of bank, savings or securities accounts;		
(iv) organisation of contributions necessary for the creation, operation or management of companies;	(iv) organisation of contributions necessary for the creation, operation or management of companies;		

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(v) creation, operation or management of trusts, companies, foundations, or similar structures;	(v) creation, operation or management of trusts, companies, foundations, or similar structures;		
(c) trust or company service providers;	(c) trust or company service providers;		DE: (Comments): According to the definition in Art. 2 Nr. 7, lawyers and notaries may fall under the scope of trust or company service provides, since they are involved in the formation of companies or other legal persons. They should be exempted here in order to avoid a duplication of the qualification as obliged entity. Article 2 (3) (c) of Directive 2015/849 contains a corresponding limitation. Drafting suggestion: c) trust or company service providers not already covered under point (a) or (b);

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(d) estate agents, including when acting as intermediaries in the letting of immovable property for transactions for which the monthly rent amounts to EUR 10 000 or more, or the equivalent in national currency;	(d) estate agents, including when acting as intermediaries in the letting of immovable property for transactions for which the monthly rent amounts to EUR 10 000 or more, or the equivalent in national currency;		AT: (Comments): The legislative package uses a new wording to designate numerical thresholds, namely “euro or the equivalent in national currency”. A national currency, in our understanding, refers to a currency recognised as an official currency. With some very minor exceptions (El Salvador), no crypto-asset has been designated as an official currency, so that they would remain outside the scope of the new wording. It also seems to exclude cases where there is no exchange of currency (for instance when gold is exchanged for crypto-assets, as happened in a recent ML case in Austria). We have to keep in mind that the AMLR will be applied by a large number of professionals, not all of whom are dedicated AML/CFT experts and some of whom might actively look for loopholes. On the basis of the proposed wording, a

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			strong case could be made that any asset other than official national currencies is not subject to the requirements of the legislative package. We are not aware of any problem caused by the current wording of the 4th/5th AMLD (a simple reference to EUR) and we would strongly propose retaining it: “rent amounts to EUR 10 000 or more, ~~or the equivalent in national currency~~”. This comment applies throughout the legislative package. DK: (Comments): The Supranational risk assessment point out that the real-estate sector is encreasingly exposed to significant money laundering risks. We therefore suggest adding the following to the provision allowing MS to adopt stricter rules while still keeping a harmonized celling:

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			""(d) estate agents, including when acting as intermediaries in the letting of immovable property for transactions for which the monthly rent amounts to EUR 10 000 or more, or the equivalent in national currency, where Member States should be able to adopt lower thresholds; "
(e) persons trading in precious metals and stones;	(e) persons trading as regular or principal business or professional activity in precious metals and stones referred to in Article 2 (37), including jewellers, horologists and goldsmiths, where the value of the transaction or linked transactions amounts to at least EUR 10 000 or the equivalent in national currency;	Technical amendment.	HU: (Comments): 1. It is suggested to clarify the concepts, e.g. horologists or goldsmiths. In Hungary, the professions of gold, silver, platinum and palladium are not separated; there is a general fabrication, which means that a "goldsmith" can make a precious metal object from any kind of precious metal (gold, silver, platinum, palladium). It is therefore important to clarify what the word means here, whether it means specifically a goldsmith working

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			only with gold. If so, it is necessary to take into account the practices, customs and legislation of the Member States. 2. Production and repairing jewelry is not risky from the point of view of money laundering, the processing of precious metals requires very special knowledge. In Hungary, the "direct sale", when the precious metal object is not only produced at the place of manufacture, but also sold to the end user, is currently considered a trade in precious metals and is subject to the AML/CFT Act. For these reasons, it is suggested that a more general wording be considered, for example: traders in watches, precious metals and precious stones: service providers trading in watches and / or precious metals or articles made of precious metals and / or precious stones. Such a definition would not raise questions of interpretation for the goldsmiths, jewellers and horologists.

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			It is important to note that the stone is part of the jewelry, so it is part of the precious metal trade and not the stone trade. This is important because they can be difficult to separate if the stone is embedded in the jewelry, it could only be removed by destroying the jewelry. It is necessary to link the trade in precious metals, as well as their production and repair, to qualifications. Until 2021, the sale of watches and jewellery in Hungary required the qualifications of a store manager, merchant, valuer or jeweller. 3. The inclusion of horology in the category "trade in precious metals and stones" is a leak back to trade in goods providers. If watch dealers are also included in this place, their inclusion in the title should be considered, as this category is neither a precious metal nor a precious stone. Is it recommended to clarify that in this place, when it comes to horologists, we mean all types of horologists (wristwatches, wall clocks, pendulum clocks,

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			pocket watches, table clock, etc.)? Or just those who sell watches. Or does this only apply to precious metal watches? The Hungarian activity classification (TEÁOR'08) is identical with the European one, NACE Rev.2. Statistical Classification of Economic Activities in the European Community, 2008. In the Hungarian TEÁOR, the retail of watches and jewellery is in the same category as the wholesale of watches and jewellery. It would be possible to separate these by redistributing professional codes. As long as it is not possible to filter for a group of service providers based on the professional code, it is impossible to determine exactly which service providers may be affected. This is problematic here, because a service provider in Hungary may be a watch and jewelry retailer according to the TEÁOR code, but it is not yet certain that it will carry out both activities, it may not sell watches at all.

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			4. Last but not least, if, unlike the previous directive, precious metals and stone traders are to be included as a separate category from traders in goods, it is proposed to clarify that this applies only to service providers (businesses) and not to persons. For service providers whose activities are subject to a notifiable or verifiable register and the scope can be clearly identified by professional code. This is necessary because if the scope is too broad – like persons - the category becomes uncontrollable. Incidentally, whether the activity is carried out as a regular or principal activity or as a professional activity, it is important that it trades in watches, precious metals or precious stones up to a value limit. IT: (Comments): We suggest to delete reference to 'horologists', as such category encompasses commercial activities that do not perform trade of 'precious metals' relevant for

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			AML/CFT purposes, but can be rather traced back to the wider notion of “traders in luxury goods”. Against this background including such category as “harmonized obliged entity”, falling within the notion of traders in precious metals and stones could lead to inconsistencies in comparison with other relevant traders in luxury goods. AT: (Comments): We have two comments. 1. The definition „persons trading as regular or principal business or professional activity” refers to three different criteria that are incompatible with each other. It wouldn’t be possible to apply this definition in practice. To illustrate, 1 % of total revenue may constitute regular business activity, whereas over 50 % of total

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			revenue would constitute principal activity. The obliged entity and competent authority would find it impossible to apply this definition. We suggest to clarify it: “(e) persons trading as regular ~~or principal business or professional~~ activity in precious metals and stones...” Question on the inclusion of horologists: With regard to the inclusion of horologists, would they be included for the sale of watches containing precious stones or metals? In addition, we may want to clarify whom the limit of € 10 000 refers to. The FATF Recommendations include traders in precious metals and goods without reference to a specific threshold. BE: (Comments):

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			Merchants of cultural goods and merchants of precious metals and stones, become o.e. “where the value of the transaction or linked transactions amounts to at least EUR 10 000 or the equivalent in national currency;” The moment that a merchant becomes an obliged entity, is the moment that he sells one or several goods for at least 10.000 €. So, if a customer wants to buy several goods for a total amount of at least 10.000 €, the merchant becomes an obliged entity at this moment, which means that, at this precise moment, he should have a AML, a risk-analyze procedure etc., which is impossible. Therefore, we propose this end of sentence: “where the price of one or several linked goods amounts to at least EUR 10 000 or the equivalent in national currency.” ES: (Comments):

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			We do not agree with the amendemntes, nor with the threshold itself. 1. There should be some limits in the consideration of the jewellers, horologists, goldsmiths and similar as obliged entities, such us for example, their turnover. Otherwise it should be almost impossible for competent authorities to control the sector and therefore to supervise all of its members. In line with FATF standards, there should not be any threshold at all. In addition, evidence has also shown us that. activities carried out by these obliged entities below the €10m thershold haven been used not only for ML but also for TF purposes (e.g. high value cash transactions without exceeding the threshold or a high number of transactions that individually do not exceed the threshold, but together may exceed it by far).

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			DK: (Comments): We therefore suggest adding the following to the provision allowing MS to adopt stricter rules while still keeping a harmonized ceiling: <i>(e) persons trading as regular or principal business or professional activity in precious metals and stones referred to in Article 2 (37), including jewellers, horologists and goldsmiths, where the value of the transaction or linked transactions amounts to at least EUR 10 000 or the equivalent in national currency ,where Member States should be able to adopt lower thresholds;"</i> DE: (Comments): We welcome the introduction of a threshold for dealers in precious stones and metals, above which these dealers would only attain the status of obliged entities. Here we would propose a threshold of transactions of EUR 2,000. Our national NRA has demonstrated

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			that a threshold of 10.000 EUR is too high, particularly in the sector of precious metals and stones as customers often tried to circumvent identification by multiple purchases just below the threshold (which could not be linked to each other). The lowering of this threshold has been perceived as a major achievement in terms of risk-sensitive regulation that should be preserved, particularly because of the currency-like use of some precious metals. Since we have added jewellers, horologists and goldsmiths to the definition of dealers in precious stones and metals this threshold of 2.000 EUR will ensure that we do not cover any dealers that would per se fall under the definition but only deal with low value goods such as cheap watches. In this context, we continue to advocate for adding other dealers in high-value goods in addition to precious metals and precious stones

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			to the list of obliged entities in the AMLR. These include motor vehicles, boats, aircraft, among others. Here also, we would propose to introduce a threshold of 10.000 EUR per transaction. We know that with this positioning we are obliging traders in goods also, unlike in the current framework, with regard to their non-cash transactions. Risk in the trade of these precious goods does not arise solely from cash transactions, but that risk arises regardless of the type of transaction when trading in high-value goods (trade-based money laundering). <u>Technical comment:</u> As stated before, we have concerns with regard to the technical implementation of the extension to jewellers, horologists and goldsmiths: If we read the extension in the same breath as dealers in precious stones and precious metals, it could be

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			assumed that, for example, a watch sold by a horologist must consist partly of a precious metal or precious stone in order for the horologist to become an obliged entity. The same is true for a jeweller who sells a high-value pearl necklace: Again, one could take the position that such a jeweller is not covered because the pearl necklace does not consist of precious metals/precious stones. In our understanding, however, we want to capture the trade of high-value watches or pearl necklaces by a horologist/jeweller regardless of whether the watch/pearl necklace is made of precious metals/precious stones. We would therefore suggest a corresponding clarification, which could for example look as follows: <u>Drafting suggestion:</u> (e) persons trading as regular or principal business or professional activity in precious metals and stones referred to in Article 2 (X) <u>as</u>

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			<u>well as</u> jewellers, horologists and goldsmiths MT: (Comments): MT reiterates its previous position that it is not in favour of including any threshold. Eliminating the threshold will provide visibility and comprehensibility of the framework both for supervisors and traders involved. Moreover, if a threshold had to be introduced, it would be very problematic for the supervisors and traders involved to determine which are those entities that are subject to AML/CFT supervision. Additionally, the creation of a threshold might incentivize transactions slightly below such threshold in order to circumvent any potential AML/CFT obligations that might be otherwise triggered.
(f) providers of gambling services;	(f) providers of gambling services;		DE: (Comments):

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			See comments and concerns to Art. 4 as regards exemptions
(g) crypto-asset service providers;	~~(g) crypto-asset service providers;~~		IE: (Comments): Not agreed. This should be reinstated and the reference under the definition of ‘financial institution’ should be removed BG: (Comments): Do not agree with including CASPs in the scope of the definition of ‘financial institution’ General comment: The scope of ‘financial institution’ should be kept as close as possible to the prudential scope, as large differences could create misunderstandings, especially considering the cooperation between prudential and AML/CFT authorities.

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(h) crowdfunding service providers other than those regulated by Regulation (EU) 2020/1503;	(h) crowdfunding service providers ~~other than those regulated by Regulation (EU) 2020/1503;~~		IT: (Comments): We strongly believe that crowdfunding service providers authorised according to EU Regulation should be included in the definition of financial institutions. In fact, such an activity will be permitted also to banks, investment firms, payment and e-money institutions and therefore deserves the same kind of classification for AML/CFT purposes when it is provided by specialized institutions. IE: (Comments): Not agreed. This Reg should only apply to CFSPs under 2020/1503 DE: (Comments): We support AML/CFT obligations for crowdfunding platforms in view of their vulnerabilities to money laundering and terrorist financing risks.

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	(ha) ~~third-party~~ financing intermediary;		
(i) persons trading or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses, where the value of the transaction or linked transactions amounts to at least EUR 10 000 or the equivalent in national currency;	(i) persons trading or acting as intermediaries in the trade of ~~works of art~~ cultural goods , including when this is carried out by art galleries and auction houses, where the value of the transaction or linked transactions amounts to at least EUR 10 000 or the equivalent in national currency;	Amendment to reflect the definition of cultural goods.	NL: (Comments): (j) persons storing, trading or acting as intermediaries in the trade of ~~works of art~~ cultural goods when this is carried out within free ports zones and customs warehouses, where the value of the transaction or linked transactions amounts to at least EUR 10 000 or the equivalent in national currency; BE: (Comments): Merchants of cultural goods and merchants of precious metals and stones, become o.e. “where the value of the transaction or linked transactions amounts to at least EUR 10 000 or the equivalent in

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			national currency;” The moment that a merchant becomes an obliged entity, is the moment that he sells one or several goods for at least 10.000 €. So, if a customer wants to buy several goods for a total amount of at least 10.000 €, the merchant becomes an obliged entity at this moment, which means that, at this precise moment, he should have a AML, a risk-analyze procedure etc., which is impossible. Therefore, we propose this end of sentence: “where the price of one or several linked goods amounts to at least EUR 10 000 or the equivalent in national currency.” DE: (Comments): We support the technical amendmend.
(j) persons storing, trading or acting as intermediaries in the trade of works of art when this is carried out	(j) persons storing, trading or acting as intermediaries in the trade of ~~works of art~~ cultural goods when	Amendment to reflect the definition of cultural goods.	BE: (Comments): We propose to change the actual proposition because :

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within free zones and customs warehouses, where the value of the transaction or linked transactions amounts to at least EUR 10 000 or the equivalent in national currency;	this is carried out within free zones and customs warehouses, where the value of the transaction or linked transactions amounts to at least EUR 10 000 or the equivalent in national currency;		1. This situation is a particular situation of what is written under 3 (i), so not useful. To make sense, the persons to be obliged are the services specialized in the storage of cultural goods, 2. we suggest to extend the definition to all services specialized in the storage of cultural goods whether or not they are carried out within free zones or customs warehouses. 3. The person storing doesn't know what goods are stored, then the reference to their value is not relevant We propose : persons specialized in the storing of cultural goods referred to in article 2 (X) DE: (Comments): See comment above.
(k) creditors for mortgage and consumer credits, other than credit institutions defined in Article 2(5)	(k) creditors for mortgage and consumer credits, other than credit institutions defined in Article 2(5)		SE: (Comments):

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and financial institutions defined in Article 2(6), and credit intermediaries for mortgage and consumer credits;	and financial institutions defined in Article 2(6), and credit intermediaries for mortgage and consumer credits;		See comment above about the definition concerning “financial institutions”.
(l) investment migration operators permitted to represent or offer intermediation services to third country nationals seeking to obtain residence rights in a Member State in exchange of any kind of investment, including capital transfers, purchase or renting of property, investment in government bonds, investment in corporate entities, donation or endowment of an activity to the public good and contributions to the state budget.	(l) investment migration operators permitted to represent or offer intermediation services to third country nationals seeking to obtain residence rights in a Member State in exchange of any kind of investment, including capital transfers, purchase or renting of property, investment in government bonds, investment in corporate entities, donation or endowment of an activity to the public good and contributions to the state budget.		

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<i>Article 4</i>	<i>Article 4</i>		
Exemptions for certain providers of gambling services	Exemptions for certain providers of gambling services		DE: (Comments): Due to high money laundering risks and cross-border activities in the gambling sector and for the purpose of a level-playing field, no national exceptions should be possible in this sector.
1. With the exception of casinos, Member States may decide to exempt, in full or in part, providers of gambling services from the requirements set out in this Regulation on the basis of the proven low risk posed by the nature and, where appropriate, the scale of operations of such services.	1. With the exception of casinos, Member States may decide to exempt, ~~in full or in part~~ , providers of gambling services from full or part of the requirements set out in this Regulation on the basis of the proven low risk posed by the nature and, where appropriate, the scale of operations of such services.		IE: (Comments): Replace the word “full” with “all” DE: (Comments): There are concerns about not drafting a uniform list of obliged entities on the level of the EU regulation also with regard to possible exemptions. At least the process of exempting obliged entities should be more in line with the process of adding obliged

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			entities according to article 3 of AMLD6. Also with regard to the uniform scope of AMLA supervision, the national exemptions in line with this Article might distort the even application of Union law.
2. For the purposes of paragraph 1, Member States shall carry out a risk assessment of gambling services assessing:	2. For the purposes of paragraph 1, Member States shall carry out a risk assessment of gambling services assessing:		
(a) money laundering and terrorist financing vulnerabilities and mitigating factors of the gambling services;	(a) money laundering and terrorist financing ~~threats~~ , vulnerabilities and mitigating factors of the gambling services;	Technical amendment.	
(b) the risks linked to the size of the transactions and payment methods used;	(b) the risks linked to the size of the transactions and payment methods used;		

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(c) the geographical area in which the gambling service is administered.	(c) the geographical area in which the gambling service is administered, including their cross border dimension and accessibility from other Member States or third countries.		
When carrying out such risk assessments, Member States shall take into account the findings of the risk assessment drawn up by the Commission pursuant to Article 7 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> .	When carrying out such risk assessments, Member States shall take into account the findings of the risk assessment drawn up by the Commission pursuant to Article 7 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> .		

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3. Member States shall establish risk-based monitoring activities or take other adequate measures to ensure that the exemptions granted pursuant to this Article are not abused.	3. Member States shall establish risk-based monitoring activities or take other adequate measures to ensure that the exemptions granted pursuant to this Article are not abused.		
Article 5	Article 5		DE: (Comments): We have seen that the exemption stated in Art. 12 of AMLD 5 is no longer included in the AMLR proposal and we could not find any reference in the impact assessment. Could you share your reasoning for not including the exception contained in Art. 12 in the current proposal?
Exemptions for certain financial activities	Exemptions for certain financial activities		BE: (Comments): NBB:

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			1) Recital 8 provides that “<i>it is necessary to recognise that this Regulation does not apply to financial activities or other financial services which are provided by members of a group to other members of that group</i>”. If it is indeed the intention, this should be clearly set out in article 5 relating to “Exemptions for certain financial activities”. 2) As far as it remains that activities exercised under the Freedom to provide services belong to the supervisory domain of authorities of the Home Member State, while those exercised under the Free establishment (branches or other forms of establishment) belong to the supervisory domain of authorities of the Host Member State, we identified, in our capacity of host national competent authority (NCA), situation where there is legally an establishment in Belgium (branch or agent) but where the real activities of these establishments are strictly limited to “pre-contractual” contacts with

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			prospects, and where, if the prospect decides to become a customer, the real contractual business relationship is concluded, not with that Belgian establishment, but with the head quarter (HQ) of the same financial institution/credit institution in another Member State (MS) that also executes all financial transactions for or with that customer within that business relationship, without any intervention of the Belgian establishment. In the case of such business model, we consider that the ML/TF risks are completely located within the HQ in the other MS, must be covered by the AML/CFT systems of the HQ, under the supervision of the NCA of that MS. We consider that the rules applicable in that kind of situations should be clearly and expressly stated in the AMLR. This could be done <u>through an amendment to the definition of “obliged entities” in Article 3 AMLR</u> (for excluding that cases) or <u>through an additional exemption in</u>

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			<u>Article 5 AMLR</u> (allowing MS to exclude them from the scope of obligations).
1. With the exception of persons engaged in the activity of money remittance as defined in Article 4, point (22) of Directive (EU) 2015/2366, Member States may decide to exempt persons that engage in a financial activity as listed in Annex I, points (2) to (12), (14) and (15), to Directive 2013/36/EU on an occasional or very limited basis where there is little risk of money laundering or terrorist financing from the requirements set out in this Regulation, provided that all of the following criteria are met:	1. With the exception of persons engaged in the activity of money remittance as defined in Article 4, point (22) of Directive (EU) 2015/2366, Member States may decide to exempt legal or natural persons that engage in a financial activity as listed in Annex I, points (2) to (12), (14) and (15), to Directive 2013/36/EU on an occasional or very limited basis where there is little risk of money laundering or terrorist financing from the requirements set out in this Regulation, provided that all of the following criteria are met:		

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(a) the financial activity is limited in absolute terms;	(a) the financial activity is limited in absolute terms;		
(b) the financial activity is limited on a transaction basis;	(b) the financial activity is limited on a transaction basis;		
(c) the financial activity is not the main activity of such persons;	(c) the financial activity is not the main activity of such persons;		
(d) the financial activity is ancillary and directly related to the main activity of such persons;	(d) the financial activity is ancillary and directly related to the main activity of such persons;		
(e) the main activity of such persons is not an activity referred to in Article 3, point (3)(a) to (d) or (f);	(e) the main activity of such persons is not an activity referred to in Article 3, point (3)(a) to (d) or (f);	Reference to point (g) deleted due to moving the CASP to Article 3(2).	IE: (Comments): Not agreed. CASP should be reinstated in its original place

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(f) the financial activity is provided only to the customers of the main activity of such persons and is not generally offered to the public.	(f) the financial activity is provided only to the customers of the main activity of such persons and is not generally offered to the public.		
2. For the purposes of paragraph 1, point (a), Member States shall require that the total turnover of the financial activity does not exceed a threshold which shall be sufficiently low. That threshold shall be established at national level, depending on the type of financial activity.	2. For the purposes of paragraph 1, point (a), Member States shall require that the total turnover of the financial activity does not exceed a threshold which shall be sufficiently low. That threshold shall be established at national level, depending on the type of financial activity.		
3. For the purposes of paragraph 1, point (b), Member States shall apply a maximum	3. For the purposes of paragraph 1, point (b), Member States shall apply a maximum		DE: (Comments): We do not understand why the inserted amendment now requires

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threshold per customer and per single transaction, whether the transaction is carried out in a single operation or in several operations which appear to be linked. That maximum threshold shall be established at national level, depending on the type of financial activity. It shall be sufficiently low in order to ensure that the types of transactions in question are an impractical and inefficient method for money laundering or terrorist financing, and shall not exceed EUR 1 000 or the equivalent in national currency.	threshold per customer and per single transaction, whether the transaction is carried out in a single operation or is linked to other transactions in several operations which appear to be linked . That maximum threshold shall be established at national level, depending on the type of financial activity. It shall be sufficiently low in order to ensure that the types of transactions in question are an impractical and inefficient method for money laundering or terrorist financing, and shall not exceed EUR 1 000 or the equivalent in national currency.		that transactions must objectively have a connection. The original version, where only the appearance of a connection (based on facts) was required did not need any changes. We prefer to revert to the wording proposed before.

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4. For the purposes of paragraph 1, point (c), Member States shall require that the turnover of the financial activity does not exceed 5 % of the total turnover of the natural or legal person concerned.	4. For the purposes of paragraph 1, point (c), Member States shall require that the turnover of the financial activity does not exceed 5 % of the total turnover of the natural or legal person concerned.		
5. In assessing the risk of money laundering or terrorist financing for the purposes of this Article, Member States shall pay particular attention to any financial activity which is considered to be particularly likely, by its nature, to be used or abused for the purposes of money laundering or terrorist financing.	5. In assessing the risk of money laundering or terrorist financing for the purposes of this Article, Member States shall pay particular attention to any financial activity which is considered to be particularly likely, by its nature, to be used or abused for the purposes of money laundering or terrorist financing.		

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6. Member States shall establish risk-based monitoring activities or take other adequate measures to ensure that the exemptions granted pursuant to this Article are not abused.	6. Member States shall establish risk-based monitoring activities or take other adequate measures to ensure that the exemptions granted pursuant to this Article are not abused.		
<i>Article 6</i>	<i>Article 6</i>		
Prior notification of exemptions	Prior notification of exemptions		
1. Member States shall notify the Commission of any exemption that they intend to grant in accordance with Articles 4 and 5 without delay. The notification shall include a justification based on the relevant risk assessment for the exemption.	1. Member States shall notify the Commission of any exemption that they intend to grant in accordance with Articles 4 and 5 without delay. The notification shall include a justification based on the relevant risk assessment for the exemption.		

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2. The Commission shall within two months from the notification referred to in paragraph 2 take one of the following actions:	2. The Commission shall within two months from the notification referred to in paragraph 2 take one of the following actions:		
(a) confirm that the exemption may be granted;	(a) confirm that the exemption may be granted;		
(b) by reasoned decision, declare that the exemption may not be granted.	(b) by reasoned decision, declare that the exemption may not be granted.		
3. Upon reception of a decision by the Commission pursuant to paragraph 2(a), Member States may adopt the decision granting the exemption. Such decision shall state the	3. Upon reception of a decision by the Commission pursuant to paragraph 2(a), Member States may adopt the decision granting the exemption. Such decision shall state the		

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reasons on which it is based. Member States shall review such decisions regularly, and in any case when they update their national risk assessment pursuant to Article 8 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> .	reasons on which it is based. Member States shall review such decisions regularly, and in any case when they update their national risk assessment pursuant to Article 8 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> .		
4. By <i>[3 months from the date of application of this Regulation]</i> , Member States shall notify to the Commission the exemptions granted pursuant to Article 2(2) and (3) of Directive (EU) 2015/849 in place at the time of the date of application of this Regulation.	4. By <i>[3 months from the date of application of this Regulation]</i> , Member States shall notify to the Commission the exemptions granted pursuant to Article 2(2) and (3) of Directive (EU) 2015/849 in place at the time of the date of application of this Regulation.		

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5. The Commission shall publish every year in the <i>Official Journal of the European Union</i> the list of exemptions granted pursuant to this Article.	5. The Commission shall publish every year in the <i>Official Journal of the European Union</i> the list of exemptions granted pursuant to this Article.		
	SECTION 3	A majority of Member States agreed with the Presidency's proposal to move outsourcing to Chapter 1 Section 3.	HR: (Comments): HR We support moving outsourcing to Chapter 1 Section 3. DK: (Comments): Agree
	Outsourcing		
	Article 6a		IT: (Comments): We welcome the repositioning of the provision and the spirit of many of the proposed

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			amendments, which are aimed at defining in a clearer and more articulated way the framework on this matter (e.g., the provisions on the prohibition of sub-outsource, on the liability of the obliged entity with regard to outsourced activities, or on the process to follow for selecting the service provider). That being said, we advise to ensure the best possible alignment between AML rules and sectoral ones (as to banks, for example, the reference is the CRD), while at the same time giving due consideration to the specificities of the AML matter, e.g. the STRs process (as more diffusely explained below). This approach does have several advantages: indeed, it would (i) ensure the whole consistency within the overall EU regulatory framework, (ii) ensure a smooth and timely implementation of the new AML provisions by obliged entities (in particular for credit and financial institutions), and (iii) avoid unnecessary burdens on these latter.

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			In particular, we believe that the underlying feature of prudential rules on outsourcing is to avoid that such process regards strategic tasks, thus preventing credit and financial institutions from becoming 'empty shells': such principle should then apply also in the AML field (see our comment below to par. 2).
	Outsourcing		ES: (Comments): Unless they have a different scope, which we have not perceived, we suggest regulating <i>outsourcing</i> and <i>performance by third parties</i> in the same chapter, so as to reflect that although both make reference to tasks performed by others, they are different figures
	1. Obligated entities may outsource tasks deriving from requirements under this Regulation to a service provider, whether a natural or	Member States raised the point that the term "outsourced entity" can be confusing. At the same time, the terms "agents and external service	HR: (Comments): HR We agree with the term "service provider".

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	legal person, with the exception of natural or legal persons residing or established in third countries identified pursuant to Section 2 of this Chapter. The obliged entity shall notify to the supervisor the outsourcing before the service provider starts the activities for the obliged entity.	providers" as originally used may be misleading. This is due to the use of the term "agent" later in the text of the Regulation with a different meaning. Furthermore, the original wording could lead to the exclusion of the impact of this article on the groups, as the interpretation of the word "external" is not entirely clear. For this reason, the Presidency proposes to use the term "service provider" as a compromise.	HU: (Comments): According to the provision of qualitative AML/CFT regime, only limited activities should be outsourced. Hungary strongly requests reinstating the text "[requirements under this Regulation] relating to the performance of customer due diligence". The use of the term 'service provider' in the case of an agent is confusing because it could lead to the reading that the agent must be an obliged entity. The draft also uses the term 'service provider' for cryptoasset service providers and crowdfunding service providers. It is suggested to elaborate use a term other than "service provider" for these agents. <u>NL:</u> <u>(Comments):</u> <u>Agreed.</u> IT:

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			(Comments): With regard to the obligation for the OE to notify to the competent supervisor the outsourcing before the service provider starts the activities for the obliged entity, (last subpar. of this par. 1) we acknowledge that this provision is functional to the performance of supervisory tasks on the service provider which are attributed to the competent authority: we are then in general in favor of providing such an obligation. With specific regard to credit and financial institutions, it seems to be also in line with the approach used by prudential rules , and it would then contribute to the overall consistency of rules applying to credit and financial institutions. That being said, however, we warn, as other delegations have pointed out, that such obligation, at least as it stands now, might pose a severe burden on AML authorities competent to receive the notification, since it is likely that

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			they receive a good deal of notifications to be processed. In order to balance the need to ensure an appropriate supervision on service providers and the need to avoid excessive administrative burden for authorities and OEs alike, we suggest redrafting the provision to require notification only for the outsourcing of important or essential functions (IEFs) performed by credit and financial institutions. Such approach has the following advantages: (i) the exclusion of non-financial OEs would ensure a desirable degree of proportionality of the rules; (ii) as credit/financial institutions, the limitation of notification to IEFs is a feature of sectoral rules, and it would then furtherly contribute to align the AML and the prudential framework. In consideration of the fact that in the prudential field several, distinct definitions of IEFs exist and that AML outsourcing rules encompass several tipologies of obliged entities, we suggest introducing an

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			ad hoc definition of ‘important or essential functions’, to be modelled upon the approach employed in the prudential framework. In particular, the qualification of an activity/task as an IEF should be up to the OE, pursuant to an hoc assessment based upon some indicators – i.e., activity/task should be deemed as an IEF in any of the following cases: a) when a defect or failure in its performance would have material adverse affect (with regard to financial performance, or to soundness or continuity in the provision of services, or to compliance with relevant rules; b) when operational tasks of internal control functions are outsourced; c) when the outsourcing of functions would require authorisation by the competent authority. Since such issue is a technical one, we believe it should be defined by the GLs AMLA will be drafting on outsourcing pursuant to par. 5 of this article (see our comment below).

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			EE: (Comments): EE Comment. With the movement of this Article, the reference to “this Chapter” should be updated. Obligated entities may outsource tasks deriving from requirements under this Regulation to a service provider, whether a natural or legal person, with the exception of natural or legal persons residing or established in third countries identified pursuant to Section 2 of this Chapter III. The obliged entity shall notify to the supervisor the outsourcing before the service provider starts the activities for the obliged entity. “Service provider” seems to be a good compromise – however, perhaps “provider of outsourced service” would be more clear and less ambiguous. The final sentence is confusing and the intent is unclear – will the supervisory entity only be notified for informative purposes or do they

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			have an option to review/prohibit the outsourcing relationship? AT: (Comments): The problem of the distribution of roles under data protection law could be solved by stipulating in Art. 6a that the service provider may not determine the purposes and means of data processing (see the definition of the controller in Art. 4(7) of the GDPR), but only the obliged entity. Following this approach, a sentence could be added to Art. 6a stating that when outsourcing tasks, the obliged entity must ensure that the purposes and means of the processing of personal data are determined by the obliged entity itself and not by the service provider. This could avoid the risk that possibly too far-reaching tasks with too much autonomy are outsourced, so that the service provider possibly decides itself on the purposes and means of the processing and therefore becomes its own data

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			protection controller within the meaning of Art 4(7) of the GDPR. (Due to the expansion of the outsourcing options in paragraph 2 to an external service provider, it is doubtful whether this is still compatible with the role of a processor as defined in Art. 4(8) of the GDPR and whether the external service provider to whom the tasks and the associated freedom of decision are outsourced, does not itself become the controller as defined in Art. 4(7) of the GDPR. However, this would also require transmission provisions between the two data protection controllers. According to Art 4(7) of the GDPR, a controller means a person who, alone or jointly with others, determines the purposes and means of the processing of personal data.) FR: (Comments): France does not find it risk-based that every outsourcing arrangement should be notified to the supervisor

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			(cumbersome and costly). We suggest deleting that provision. ES: (Comments): We do agree with the deletion of the word external, as far as we consider that it provides equal treatment fo extra and intra group outsourcing. However, we believe it would be more clarifying to expressly mention the treatment of the intra-group outsourcing in this article. In this regard, see paragraph 68.d. of the recent approved EBA's GL on AMLCFT compliance officer, where states that "<i>intra-group outsourcing should be subject to the same regulatory framework as outsourcing to service providers outside the group</i>" We suggest adding a paragraph clarifying this aspect. Notwithstanding the above outsourcing to group members established in third countries should only be allowed if all the

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			conditions set out in article 38, paragraph 3, points (a) to (c) of this regulation (AMLR), are met. Additionally, it should be subject to additional safeguard measures in order to ensure that the outsourcing does not increase the risk of non-compliance with the legal and regulatory requirements or of inefficient performance of the outsourced tasks, nor hinders the competent authority's capacity to effectively exercise its supervisory power with regard to the group service provider (in line with EBA's GL on AMLCFT). Regarding the outsourcing notification to the supervisor, we consider important to specify what type of tasks would require notification. Otherwise the supervisory workload could be overwhelming and could be complex for smaller obliged entities that might have to outsource most of their tasks (for example jewellers).

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			In this respect, we can take on board the communication criteria that apply for the financial institution by which notification is only required when the tasks outsourced are ‘essential functions’. The scope of these ‘essential functions’ could be further specified by Guidelines. Drafting suggestion: “...<u><i>When the tasks outsourced are essential function</i></u>, the obliged entity shall notify to the supervisor the outsourcing before the service provider starts the activities for the obliged entity.” FI: (Comments): We support the possibility to outsource certain functions, while maintaining that the responsibility remains on the obliged entity. DK: (Comments): Agree

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			DE: (Comments): We welcome this provision in general since it aligns with the DNK. NLD and GER non-paper.
	The obliged entity shall remain fully liable for any action, whether an act of commission or omission, connected to the outsourced tasks-that are carried out by the service provider, and also remains responsible as controller pursuant Article 4(7) of Regulation (EU) 2016/679 for any personal data processed for the purpose of the outsourced tasks.	Minor technical change of wording.	<u>NL:</u> <u>(Comments):</u> <u>Agreed.</u> IT: (Comments): It appears doubtful that the obliged entity can meaningfully outsource tasks and remain liable for “any action” carried out to fulfil those tasks. This would be a form of liability for someone else’s acts or omission which does not appear appropriate as the obliged entities, after the outsourcing of tasks, would have essentially no controls on discrete actions undertaken by the service provider. We rather suggest to provide that obliged entities maintain their responsibility of discharging their

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			obligations pursuant to AMLR, and therefore taking (or not taking) all related decisions. We then propose to redraft such provision, in line with the wording used in sectorial regulation, in order to specify that the responsibility of decisions on matters/areas that have been outsourced should stay with the obliged entity (in <u>bold and underlined</u>): “The obliged entity that <u>outsources tasks</u> shall remain fully <u>responsible</u> for all decisions concerning the <u>discharging of such tasks and for the fulfilment of all obligations under this Regulation, as well as</u> as controller pursuant to Article 4(7) of Regulation (EU) 2016/679 for any personal data processed for the purpose of the outsourced tasks.” Moreover we notice that, pursuant to this provision, the OE would remain responsible as controller pursuant to the GDPR for any personal data processed for the purpose of the outsourced tasks.

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			We are doubtful of this provision with regard to the issue of data in possession of the service provider. In particular, we believe it is unclear; i) what data the provision is referring to; ii) what the expression ‘for the purpose of outsourced tasks’ means; iii) last, but not least, the coordination between this provision and the regime on information sharing (i.e. on prohibition of disclosure and data protection pursuant, respectively, to Artt. 54 and 55 AMLR). EE: (Comments): We support this approach and the wording. ES: (Comments): ok DK: (Comments): Agree

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	Whenever tasks are outsourced, the obliged entity shall in all cases ensure that it understands the rationale behind the activities carried out by the service provider and the approach followed in their implementation, and that it is able to demonstrate to supervisors that these activities mitigate the specific risks that the obliged entity is exposed to.		<u>NL:</u> <u>(Comments):</u> <u>Agreed.</u> IT: (Comments): Regarding the need to clarify responsibilities of the obliged entity towards the service provider, we notice, as other delegations did, that this provision might be considered a bit vague; we then re-propose the following redraft of this subparagraph (in <u>bold and underlined</u>): “Whenever tasks are outsourced, the obliged entity shall in all cases ensure that <u>the outsourcing of functions cannot result in the delegation of the obliged entity’s governing bodies responsibilities. The obliged entities remains fully responsible and accountable for complying with all of the regulatory obligations providing</u>

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			<u>in this regulation and in the relevant applicable rules, including the ability to oversee the outsourcing of the outsourced activities. The obliged entity shall be able to justify its decisions to outsource on objective reasons, understand <u>how</u> the activities <u>are</u> carried out by the <u>selected</u> service provider and the approach followed <u>by this latter</u> in their implementation, <u>and</u> demonstrate that the activities <u>outsourced</u> mitigate the specific risks that the obliged entity is exposed to.”.</u> EE: (Comments): EE Comment. We support this approach and the wording. BE: (Comments): NBB: the wording “<i>it understands the rationale behind the activities carried out</i>” is much too vague, weak and without precise and practicable legal content. We plea

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			for deleting this part of the sentence. ES: (Comments): ok DK: (Comments): Agree
	2. The tasks outsourced pursuant to paragraph 1 shall not be undertaken in such way as to impair materially the quality of the obliged entity's measures and procedures to comply with the requirements of this Regulation and of Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 – COM/2021/422 final]. The		NL: (Comments): As long as the obliged entity remains in control, is responsible for any outsourced activities and supervision is not impaired, we principally do not see any reasons to limit outsourcing. IT: (Comments): As to the list of the activities for which outsourcing would be

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	following tasks shall not be outsourced under any circumstances:		prohibited, we have the following remarks. 1) In line with the original Commission's proposal, and with the views expressed by MSs, the list now includes the activity of reporting of suspicious activities or threshold-based declarations to the FIU pursuant to Article 50 AMLR. In this regard, while we can support this proposal, <u>we recall that in our view STR-related activities should be outsourceable towards entities belonging to the same group and being established in the same jurisdiction as the OE.</u> 2) With regard to STRs we also notice that, unlike the original Commission proposal, the list does not any longer include the detection of suspicious or unusual transactions and activities – which therefore would be fully outsourceable.

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			We cannot support such outcome: it is not appropriate to separate the two activities of “detection” and reporting and make them subject to different outsourcing regimes. Therefore, if outsourcing is prohibited with regard to the activity of reporting of suspicious activities, the very same prohibition should apply also to the detection; please see our drafting proposals below at paragraph 2. 3) In the end, on the sensitive issue of outsourcing STR-related activities, we would like to draw the attention on the fact that for us there are only two possible alternative approaches – i.e. either providing a total ban on STR-related activities or to allow outsourcing only to the national components of the group (as in our original stance). We are not available to consider other options, e.g. providing a ban on outsourcing such activities all

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			while allowing it towards third parties such as PPPs. In this regard, we note that the provisions in article 54 on possible disclosures and the activities of “Partnerships for information sharing” may conflict with the outsourcing regime, in its scope and limitations, in so far as the Partnership, by its definition, would have a role in “supplementing compliance” for participating obliged entities; lacking further clarifications, this could include STR information and tasks. Please, see comments under article 54. Finally, with regard to activities not included in the list (i.e. for which outsourcing is permitted), we suggest conferring to AMLA a mandate to issue L2 regulation providing that the outsourcing to entities established in third countries is subject to additional safeguard measures, similarly to

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			what is already provided by EBA GLs on AMLCO as to outsourcing of operational functions of the AML compliance officer. EE: (Comments): EE Comment. We are generally very happy with the progress made with this list. BE: (Comments): NBB: we very much welcome that the decision to filing STRs has been reintroduced in the list of non-outsourcable 'strategic decisions'. <u>However, some important decisions, which were initially mentioned in the Commission proposal, are now deleted from the list, and the following crucial ones should in our opinion also appear on it:</u> a. the approval of the methodology used to determine the ML/TF risk associated with a given business relationship, the attribution of a risk profile to a

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			prospective client, and the entering into a business relationship with the client; b. the approval of the criteria for the detection of unusual or suspicious transactions and activities. In both cases, obliged entities can still use an external consultant for preparing the decisions but <u>at least, the final approval should be done by the obliged entity itself. This is required for consistency with the principle that OEs should in any case remain fully responsible for the compliance and effectiveness of their AML/CFT systems.</u> <u>Otherwise, one risks allowing the creation of ‘shell OEs’, who cannot be held responsible anymore for key decisions</u> for the good and simple reason that they no longer takes any, in the meaning they won’t take position on the appropriateness of the decisions considering their own particularities and the ML/TF risks they faces. And this requires a minimum level of expertise.

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			ES: (Comments): We would suggest specifying that the final decision on significant tasks, and not only the liability for carrying out them, should always be taken by the OE. (e.g. define the methodology or criteria to qualify business relationships or to assess risks). Accordingly, the list of not outsourceable tasks should be enlarged Once this list has been decided, proportionality should be taken into account. E.g. OE with no employees of its own other than the managers, may be allowed to outsource these tasks. DK: (Comments): Agree In general the key point for us is that the obliged entity remains in control, and is responsible for any outsourced activity, and that

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			outsourcing does not impair supervision. LT: (Comments): We have some reservations to this proposal. In general, we understand the intention to support smaller entities in their compliance with the AML/CFT rules. Nevertheless, if all strategic functions will be outsourced, we are concerned with the possible risks and negative implications to the broader AML/CFT regime. Therefore, in our opinion, outsourcing should stay limited to some extent. We are not in favour with the deletion of the list of tasks that are not allowed to be outsourced. Allowing to outsource all the tasks requires significant improvement of controls, setting the criteria for outsourcing and its supervision. Outsourcing may pose increased risks, new risk of managing relations with service providers and practical issues for OE, as well as supervisory

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			authorities (e.g. communication, access to information, etc.), especially considering cross-border cases.
	(a) the approval of the obliged entity's risk assessment pursuant to Article 7;		<u>NL:</u> <u>(Comments):</u> <u>As long as the obliged entity remains in control, is responsible for any outsourced activities and supervision is not impaired, we principally do not see reasons to limit outsourcing.</u> FI: (Comments): We support the list of the tasks which are not allowed to be outsourced. DK: (Comments): Agree, but from our point of view not a necessary restriction, cf. general comment above.

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	(b) the approval of the obliged entity's policies, controls and procedures pursuant to Article 8;		<u>NL:</u> <u>(Comments):</u> <u>As long as the obliged entity remains in control, is responsible for any outsourced activities and supervision is not impaired, we principally do not see reasons to limit outsourcing.</u> IT: (Comments): We suggest reformulating let. b as follows: <u>"the design and</u> the approval of the obliged entity's internal policies, controls and procedures pursuant to Article 8;" DK: (Comments): Agree, but from our point of view not a necessary restriction, cf. general comment above.
	(c) the reporting of suspicious activities or threshold-based	Based on the concerns raised by many Member States, the	HU: (Comments):

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	declarations to the FIU pursuant to Article 50.	Presidency proposes to reintroduce the ban on outsourcing STR reporting.	According to Hungary in terms of outsourcing, not only the submission of STRs, but also the decision to send them should not be outsourced, therefore we suggest reinserting the following text in Article 6a: <i>“the identification of criteria for the detection of suspicious or unusual transactions and activities;”</i> Besides this, we would suggest reinserting the following provisions as well: <i>-“the drawing up and approval of the obliged entity’s policies, controls and procedures to comply with the requirements of this Regulation;”</i> <i>-“the attribution of a risk profile to a prospective client and the entering into a business relationship with that client;”</i> We are of the opinion that these activities shouldn’t be outsourced under any circumstances. <u>NL:</u> <u>(Comments):</u>

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			<u>As long as the obliged entity remains in control, is responsible for any outsourced activities and supervision is not impaired, we principally do not see reasons to limit outsourcing.</u> IT: (Comments): We suggest reformulating let. c as follows: “the detection and reporting of suspicious activities or threshold-based declarations to the FIU pursuant to Article 50;” FR: (Comments): Technical amendment : we would add “transactions” in addition to activities. In any case, the wording should be harmonized with that of Article 50 when a compromise is found on that article. (c) the reporting of suspicious transactions, activities or threshold-based declarations to the FIU pursuant to Article 50.

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			ES: (Comments): (Please note that article 50 does not contain any provisions regarding “<i>threshold-based declarations</i>”. The only reference is in recital 77) We consider that this general ban should be reframed. In this sense, only the significant tasks could not be outsourced: • The ‘<i>approval of the criteria</i> to be used by the obliged entity to detect suspicious or unusual transactions for its ongoing monitoring and/or reporting purposes’, and • The ‘<i>final decision to report</i> suspicious transactions to the FIU’ On the contrary, tasks such as the <i>reporting</i> of the suspicious transactions could be OS, although -as stated- the OE will remain ultimately responsible for the <i>decision</i> to report these transactions

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			See in this regard the EBA's GL on AMLCFT compliance officers, having in mind that it refers only to financial firms. FI: (Comments): We are happy that the ban on outsourcing STR's, so that the responsibility on taking the decision on reporting stays clearly on the obliged entity. DK: (Comments): Denmark is concerned that this restriction might impair the effectiveness of partnerships for information sharing. Our main focus is to make these partnerships operational, and our concern here is that the restriction can limit the efficiency achievable by obliged entities involved in such partnerships and by the FIUs For example in cases where OEs cooperate in transaction

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			monitoring, and particularly the assessment of potential STRs. If the partnership has identified a network of suspicious transactions, it would be more efficient for the OEs to send one full report to the FIU, and for the FIU to receive one full report rather than fragments of the full report from the individual OEs involved, cf. also comments to article 55 paragraph 7. We would therefore suggest that partnerships for information sharing in the AML/CFT field can be exempted from the restriction on reporting of STRs, if consent is granted by national competent authorities. We suggest the following redrafting: <i>“the reporting of suspicious activities or threshold-based declarations to the FIU pursuant to Article 50, unless consent is granted by national competent authorities to allow obliged entities participating in a partnership for information sharing</i>

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			<i>in the AML/CFT field to outsource the reporting of suspicious activities to the partnership. ”</i> DE: (Comments): We understand the reasoning to reintroduce the ban that the filing of STRs cannot be outsourced. However, we would suggest that partnerships for information sharing in the AML/CFT field are exempted from the restriction on reporting of STRs. Otherwise, the results of an analysis done in the partnerships under Article 55 would have to be split up again and sent to the FIU in pieces. This would put limits on the efficiency of FIUs. Drafting suggestion: “The reporting of suspicious activities or threshold-based declarations to the FIU pursuant to Article 50, <i>unless consent is granted by national competent authorities to allow obliged entities</i>

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			<i>participating in a partnership for information sharing in the AML/CFT field to outsource the reporting of suspicious activities to the partnership.</i> MT: (Comments): While MT is not against the re-drafting of this sub-article, MT is still in favour of providing an exception to the prohibition of outsourcing the obligation to report suspicious transactions (para c) for collective investment undertakings particularly when these do not have a separate legal personality, or do not have a physical operational set-up other than a registered address and a board of directors. Indeed, even where such undertaking is established as a body corporate and therefore has legal personality, the usual business model followed is to have a non-executive BoD and all other functions being outsourced to various service providers, the main ones being the investment manager, the administrator, and the custodian.

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			While it would still be expected that the Board of Directors shoulders the necessary responsibilities in approving the business risk assessment, policies, procedures, etc., and oversees the tasks of the outsourced services, it would be quite problematic if reporting were to be left to one or more of the directors, who usually are non-executive, and who would not be in possession of the required information and documentation to analyse any internal reports. MT would like to highlight that this issue has already been considered and addressed in the recent EBA Guidelines on the Role of the AML/CFT Compliance Officer, namely in paragraph 71 thereof which sets out the following: <i>‘Where the credit or financial institution does not have any officers or employees of its own other than a management body, it may outsource the AML/CFT compliance function to a service</i>

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			<i>provider. In such instances the AML/CFT compliance officer should be the AML/CFT compliance officer of one of the service providers who has experience or knowledge on the type of activity or transactions carried out by the credit or financial institution.'</i> MT has taken note of comments made during previous WPs that the issue of outsourcing in the context of collective investment undertakings has been resolved through the inclusion of a reference to the investment fund manager in the definition of the term of collective investment undertakings. However, there are still a number of issues that MT would like to raise in this regard: (i) MT feels that the manner in which the definition is drafted, does not clearly reflect the Commission's intention. The text as it currently stands can be understood that both collective investment undertakings and the investment fund manager

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			are being considered as OEs in their own right, though in the case of the investment fund manager, it is being wrongly classified as a collective investment undertaking. It has to be borne in mind that customer-wise, the two entities have different relationships, i.e., the investment fund manager has the collective investment undertaking as its customer and the collective investment undertaking has the individual investor as its customer. This lends more credibility to the point being made on the different meanings that can be attributed to the said definition. (ii) Even if this definition is read together with Recital 18 AMLR, it would only very limitedly address MT's concerns re. outsourcing in the case of collective investment undertakings. The said Recital provides that "[b]ecause funds might be constituted without legal personality, the inclusion of their managers in the scope of this Regulation is also necessary". This

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			implies that if a collective investment undertaking is established as a trust or as a contractual arrangement (where the said undertaking would have no legal personality), the responsibility of ensuring compliance with AML/CFT obligations would fall onto the investment fund manager. While MT welcomes this, it is of the opinion that this isn't clearly reflected in the definition of 'collective investment undertaking' and is only marginally related to the issue of outsourcing as it is more a recognition of the fact that obligations cannot be imposed on legal arrangements but necessarily on those who are representing the same. Additionally, the investment fund manager may not always be the one best placed to carry out AML/CFT obligations with respect to the activities of the collective investment undertakings. Indeed, MT would consider that the best service provider to do so would be

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			the administrator who would actually be processing instructions to subscribe, transfer and redeem units in collective investment undertakings, and therefore, has first-hand visibility to the transactional activity and to the records of the collective investment undertaking. MT is aware however, that this may not always be the case in every MS. MT's proposal would therefore be: (a) To remove reference to fund managers from the definition of collective investment undertakings in the manner as identified in earlier comments under Article 2(6)(e). (b) To include the following subparagraph after point (c) of Article 6a: <i>Where a collective investment undertaking established in a Member State has no legal</i>

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			<i>personality, or has only a board of directors and has delegated the processing of subscriptions and the collection of funds from investors, it may outsource the task referred to under point (c) to one of its service providers that is best placed to carry out the said tasks, taking into consideration the resources, experience and knowledge that the service provider has in the area of money laundering and funding of terrorism as well as the type of activity or transactions carried out by the collective investment undertaking.</i>
	Any subsequent outsourcing of tasks by the service provider to other service provider is not allowed.		NL: (Comments): Propose to drop this requirement in light of the recent working group discussions. It is unclear what the consequences are, these arrangements are probably currently in place and important to the functioning of the OE's.

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			Furthermore, para 1, 2, 3, 4 and 5 already provide sufficient safeguards to adress possible issues of subsequent outsourcing. IT: (Comments): As pointed out by other delegations, we notice that such provision seems to depart from the approach employed in sectoral rules on outsourcing. That being said, we wonder whether such prohibition has been explored with regard to all its possible consequences (especially in consideration of the fact that service providers to which tasks are outsource resort to IT providers to perform them). FR: (Comments): We strongly oppose the prohibition of sub-outsourcing as it uselessly complicates the tasks of compliance with AML requirements for obliged entities that need to rely on a chain of external service providers to be

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			more effective. EBA guidelines on outsourcing arrangements (section 13.1 ; paragraph 76 and following) can serve as inspiration for enclosing the practice of sub-outsourcing within strict conditions. Therefore an article 6b could read as follows: <i>“1. Obligated entities should agree to sub-outsourcing only if the sub-contractor undertakes to:</i> <i>a. comply with all applicable laws, regulatory requirements and contractual obligations;</i> <i>and</i> <i>b. grant the obliged entity and competent authority the same contractual rights of access and audit as those granted by the service provider.</i> <i>2. Obligated entities should ensure that the service provider appropriately oversees the sub-service providers, in line with the policy defined by the obliged entity. If the sub-outsourcing proposed could have material adverse effects on the outsourcing arrangement of a</i>

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			<i>critical or important function or would lead to a material increase of risk for the obliged entity should exercise its right to object to the sub-outsourcing, if such a right was agreed, and/or terminate the contract.”</i> It can be then left to AMLA guidelines to determine the template of an outsourcing contract when the obliged entity authorizes the outsourced entity to outsource in return. ES: (Comments): We believe that the feasibility of this paragraph should be assessed, since the current volume of subsequent outsourcing in the case of, for example, credit and financial institutions, can be very high. What is relevant is to allocate the final responsibility for compliance with AML framework to the OE. FI: (Comments):

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			The ban to subsequent outsourcing makes the relationship between the obliged entity and the service provider clearer and we support the draft. DK: (Comments): We see an potential issue in prohibiting subsequent outsourcing. It is unclear what the consequences are, as these arrangements are probably currently in place and important to the functioning of the OE's. Furthermore, the proposal already addresses the key safeguard, namely that obliged entities must maintain control and is responsible for any outsourced activity, and that supervision cannot be impaired.
	3. Before an obliged entity outsources a task pursuant to paragraph 1, it shall assure itself	Minor technical change of wording.	HU: (Comments): Examples or a guidance on the reliability and qualifications

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	that the service provider is reliable and sufficiently qualified to fulfil its obligations. Furthermore, it has to ensure that the service provider applies the measures and procedures adopted by the obliged entity. The conditions for the performance of such tasks shall be laid down in a written agreement between the obliged entity and the service provider. The obliged entity shall perform regular controls to ascertain the effective implementation of such measures and procedures by the service provider. The frequency of such controls shall be		requirements would be useful, especially in the light of the supervisory inspections. <u>NL:</u> <u>(Comments):</u> <u>Agreed.</u> BE: (Comments): NBB: When the service provider is an agent/distributor as defined under the PSD II or the EMD (as opposed to another service provider which is not in contact with the public), the OE is considered as having an establishment in the Member state where the agent/distributor is established and local AML law applies. Therefore, measures and procedures to be applied by the agent/distributor will need to take the local AML law (and local characteristics) into account. In order to highlight this very important element, we would suggest to adapt Article 6a (3) as follows:

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	determined on the basis of the nature of the tasks outsourced.		the obliged entity “<u>shall</u> ~~has to~~ ensure that the service provider applies the measures and procedures adopted by the obliged entity. <u>When the service provider is an agent or a distributor, these measures and procedures shall take into account local implementation of AML/CFT rules</u>. The conditions for the performance of such tasks shall be laid down in a written agreement between the obliged entity and the service provider. The obliged entity shall perform regular controls to ascertain the effective implementation of such measures and procedures by the service provider.” ES: (Comments): ok DK: (Comments): Agree

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	4. Obligated entities shall ensure that outsourcing is not undertaken in such way as to impair materially the ability of the supervisory authorities to monitor and retrace the obliged entity's compliance with all of the requirements laid down in this Regulation.		<u>NL:</u> <u>(Comments):</u> <u>Agreed.</u> ES: (Comments): ok DK: (Comments): Agree
	5. By [3 years after the entry into force of this Regulation], AMLA shall issue guidelines addressed to obliged entities on:		<u>NL:</u> <u>(Comments):</u> <u>Agreed.</u> IT: (Comments): As said above, we believe that notifications on outsourcing to competent authorities should be limited to important or essential functions (IEFs) performed by credit and financial institutions – with IEFs to be specifically defined by AMLA in its L2 regulation, in

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			coherence with the definition used in prudential rules. We then suggest including also the definition of IEFs within the mandate entrusted to AMLA pursuant to this paragraph. AT: (Comments): 5. By [3 years after the entry into force of this Regulation], AMLA, <u>taking into account the EBA's Guidelines on Outsourcing</u>, shall issue guidelines addressed to obliged entities on: ES: (Comments): As regards the financial sector, AMLA should cooperate with EBA/ESAs, author of the latest prudential guidelines on this matter DK: (Comments): Agree

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	(a) the establishment of outsourcing relationships in accordance with this article, their governance and procedures for monitoring the implementation of functions by the service provider;	In order to avoid confusion with the EBA guidelines, it is proposed to remove “, and in particular those functions that are to be regarded as critical”. Under EBA guidelines on outsourcing, AML-TF functions are regarded as critical (§ 29). Besides, “critical functions” only applies to credit institutions and payment services providers and not to all obliged entities.	<u>NL:</u> <u>(Comments):</u> <u>Agreed.</u> ES: (Comments): ok DK: (Comments): Agree
	(b) the roles and responsibility of the obliged entity and the service provider within an outsourcing agreement;	A technical to simplify the text without changing its meaning.	<u>NL:</u> <u>(Comments):</u> <u>Agreed.</u> IT: (Comments): As the regime on responsibility is already set in the AMLR ((which provides that it remains with the obliged entity), it is unclear what

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			would be the scope of AMLA GLs on such issue. ES: (Comments): ok DK: (Comments): Agree
	(c) supervisory approaches to outsourcing.	A technical change from the proposed text consisting in the removal of the words ", whether" which should lead to a simplification of the text without changing its meaning.	<u>NL:</u> <u>(Comments):</u> <u>Agreed.</u> ES: (Comments): ok DK: (Comments): Agree
	6. When performing the activities under this Article, the service	Designed as an alternative approach to regulating the	HU: (Comments):

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	provider is to be regarded as part of the obliged entity.	exchange of information between obliged entities and service providers.	As the "service provider" is a part of the obliged entity, it is reasonable to outsource the reporting of STRs to the "service provider". <u>NL:</u> <u>(Comments):</u> <u>We strongly s</u>Suggest to drop this paragraph, <u>as</u>. ~~We think~~ it is unclear. We understand the rationale behind it, but this specific wording might have unintended consequences. Additionally, we think that this wording might not be needed, as the sharing of data by obliged entities to the entity that performs the outsources tasks is covered by article 55 that allows entities to process data and general GDPR framework. IT: (Comments): As to the new paragraph 6, we understand that such provision is aimed at regulating the exchange of information between the obliged

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			entity and the service provider; however, we cannot accept this provision, since – if we are not mistaken – we believe that it would allow seamless information sharing and thus would elude the regime of prohibition of disclosure pursuant to Art. 54 (and of data protection pursuant to Art. 55). In general, we deem that STR-related information and personal data should be available to obliged entities only, and therefore should not be shared with any other entities, not even service providers to which some activities have been outsourced. More generally, being “part of the obliged entity” seems a fairly vague notion with unclear implications on aspects related to, i.a., responsibility, supervision, sanctions. If in the end such provision is to be kept, we suggest limiting its scope by specifying that it applies without prejudices to the limitations provided for with regard to

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			prohibition of disclosure and data protection (pursant to Artt. 54 and 55, respectively). EE: (Comments): EE Comment. We are concerned that this could weaken the concept set forth previously that the OE is liable. If this provision applies to the whole Article, wouldn't service providers be able to "outsource responsibility" to service providers? AT: (Comments): Paragraph 6 should be deleted. If the service provider is not integrated into the obliged entity under organisational law, but is an independent company of its own, such as a separate legal entity, then it cannot be considered part of the obliged entity under data protection law. BE: (Comments):

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			NBB: Can you explain better the rationale of this provision? Without being more specified or framed, we fear it could be confusing. If it refers to article 54.1 (prohibition of disclosure), it should be expressly stated. ES: (Comments): This statement needs to be developed further to avoid misunderstandings. If it only applies for the purposes of <i>exchanging information</i>, it should read as follows in the text. Otherwise we should define the scope of this “integration” e.g should service provider be treated like OE’s employees (e.g. article 10 -awareness of requirements-)? DK: (Comments): Agree DE: (Comments):

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			This specific wording may have unintended consequences, especially in cases where one service provider is fulfilling tasks for a number of different obliged entities. We thus suggest to drop this paragraph.
CHAPTER II	CHAPTER II		
INTERNAL POLICIES, CONTROLS AND PROCEDURES OF OBLIGED ENTITIES	INTERNAL POLICIES, PROCEDURES AND CONTROLS AND ~~PROCEDURES~~ OF OBLIGED ENTITIES		BE: (Comments): These obligations are practically unapplicable for small (e.g. non-financial) obliged entities. Regulation should treat these particularly, not only as “just do the same lighter”, e.g. with a computer program helping them to fulfill the diligence obligations.
SECTION 1	SECTION 1		

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Internal procedures, risk assessment and staff	Internal procedures, risk assessment and staff		NL: (Comments): We believe it would be usefull to oblige OEs to immediately report any (major) AML/CFT related incidents to the AML/CFT supervisor. The compliance manager would be tasked with reporting the AML/CFT incident. The OE should have in place policies and procedures for the reporting of (major) AML/CFT incidents.
Article 7	Article 78		
Scope of internal policies, controls and procedures	Scope of internal policies, ~~controls~~ and procedures and controls		
1. Obligated entities shall have in place policies, controls and procedures in order to ensure compliance with this Regulation and in particular to:	1. Obligated entities shall have in place policies, ~~controls and~~ procedures and controls in order to ensure compliance with this Regulation, the Regulation <i>[please insert reference – proposal for a</i>		IT: (Comments): As general remark, we note that the provisions of the articles 7 – 11 are excessively geared towards financial institutions, without considering different and smaller obliged entities, for whom some provisions could not be applicable.

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	<i>recast of Regulation (EU) 2015/847 - COM/2021/422 final</i>], any other legal provisions adopted for the implementation of these Regulations and any administrative act issued by any supervisor and in particular to:		We suggest to reduce the level of detail in the level 1 framework and to introduce a competence of AMLA to issue guidelines for credit and financial institutions, also with a view to a better alignment to prudential rules that now are not considered in the text of the proposal (for example, including the possibility to promptly inform the competent authorities about the approval and the main reasons for the removal of AMLCO in significant financial institutions). ES: (Comments): Internal policies, procedures and controls should ensure not only compliance with the EU AML framework, but also national legislation containing the discretionally envisaged in certain areas by the AMLR [e.g. exceptions for certain financial activities (art.5 AMLR), EDD for additional sectors (art. 28.5

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			AMLR), reduction of cash limits (article 59.2)]. DE: (Comments): GER agrees with referencing the whole body of (preventive) AML/CTF law here. In addition, GER suggests to add the following words after “any administrative act issued by a supervisor”: “based on the legal provisions mentioned before”. It needs to be stipulated in a clear way that this only refers to administrative acts based on the regulations and legal provisions mentioned in this article.
(a) mitigate and manage effectively the risks of money laundering and terrorist financing identified at the level of the Union, the Member State and the obliged entity;	(a) mitigate and manage effectively the risks of money laundering and terrorist financing identified at the level of the Union, the Member State and the obliged entity;		

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(b) in addition to the obligation to apply targeted financial sanctions, mitigate and manage the risks of non-implementation and evasion of proliferation financing-related targeted financial sanctions.	(b) in addition to the obligation to apply targeted financial sanctions, mitigate and manage the risks of non-implementation and evasion of proliferation financing-related targeted financial sanctions.		AT: (Comments): Would the scope of internal policies, procedures and controls only apply to PF-related targeted financial sanctions as covered by the FATF Recommendations or to targeted financial sanctions more broadly? We noticed that Art. 31a contains such obligations. BE: (Comments): NBB: Should we not also include “mitigate and manage the risks of non-implementation and evasion of terrorist and proliferation financing-related targeted financial sanctions”? The “risks of non-implementation and evasion of proliferation financing-related targeted financial sanctions” should be further clarified and a analysis of the consequences of the revision of the FATF Recommendations in respect of proliferation financing should be

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			done, in order to determine if additional requirements beyond what is required in Articles 7(1) and 8(1) to implement targeted financial sanctions should be introduced in AMLR. (see our comments in questionnaire following WP meeting 20.06.22) DE: (Comments): Reference to TFS-obligations is problematic as Art. 7 (new: 8) para.1 (b) could only refer to risk mitigation obligations regarding the EU sanctions regimes for Iran and North Korea and not to compliance with PF-TFS in general. Setting up general financial sanctions-related requirements could interfere with Member States' competencies with regard to implementing the Common Foreign and Security Policy (Art. 29 and Art. 215 TFEU). In order to avoid an undermining of European law and of existing practices on targeted financial sanctions enforcement and in order to ensure a more coherent

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			approach on targeted financial enforcement in the member states, GER proposes to discuss the best approach for an effective sanctions enforcement framework in the council working group RELEX. Additionally, as the legal framework on TFS is different from the AML/CTF framework (i.g. on thresholds) GER is of the opinion that a common framework could cause confusion either resulting in unintended TFS breaches or overcompliance.
			NL: (Comments): (c) ensure compliance with targeted financial sanctions.
Those policies, controls and procedures shall be proportionate to the nature and size of the obliged entity.	Those policies, ~~controls and~~ procedures and controls shall be proportionate to the risks , nature and complexity of the business and size of the obliged entity and shall cover all the activities of the	Technical amendment.	ES: (Comments): ok

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	entity that fall under the scope of this Regulation.		
2. The policies, controls and procedures referred to in paragraph 1 shall include:	2. The policies, ~~controls and~~ procedures and controls referred to in paragraph 1 shall include:		ES: (Comments): We welcome the partial transfer of AML to a regulation directly applicable by all SOs. We believe it is an effective tool in building the common market by reducing those national divergences in transposition that undermined the effective implementation of the EU AML/CFT framework. However, this regulatory strategy must allow national more stringent/severe standards to be maintained, as far as its effectiveness have been proven over time. This would allow MS to preserve what works in their systems. Please see in the sections below the standards we want to preserve

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			BG: (Comments): Can MS expand on the list of elements which should be included in the policies, controls and procedures referred to in paragraph 1, for example through national legislation? MS should have this ability.
(a) the development of internal policies, controls and procedures, including risk management practices, customer due diligence, reporting, reliance and record-keeping, the monitoring and management of compliance with such policies, controls and procedures, as well as policies in relation to the processing of personal data pursuant to Article 55;	(a) the development of internal policies, ~~controls~~ and procedures, including in particular : (i) the establishment and updating of the business-wide risk assessment pursuant to Article 7; (ii) risk management practices, framework; (iii) customer due diligence, as provided by Sections 1 to 5 of	Technical amendment.	FR: (Comments): Given the new possibilities of outsourcing granted by the regulation, third party services providers that fulfill AML/CFT obligations on behalf of the obliged entity should be included in the internal communication strategy. (ix) the internal communication of the obliged entity's internal policies, procedures and controls, including to its agents, and distributors, and third party service providers involved in the

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	Chapter III and by Chapter IV of this Regulation, in particular: -(a) the process of identification of business relationships according to the criteria set out in Article 15 (5); -(b) the individual customer risk assessment; -(c) the identification and verification of the identity of the customer and of the beneficial owner; -(d) the identification of the purpose and intended nature of a business relationship or occasional transaction; -(e) the monitoring of business relationships and occasional transactions, including those that		implementation of its AML/CFT policies; ES: (Comments): 1. Internal policies and procedures on CDD (iii) should a) Include, in line with art. 21.2, a reference to the frequency of updating customer information in a new point (f). See our proposal below: <u>“(e) the frequency of updating customer information based on the risk posed by the business relationship”</u> b) Describe the procedure to analyze and detect unusual or suspicious transactions in order to determine whether they should be reported (iv) <u>the process to analyze and detect unusual or suspicious transaction, including the criteria to determine whether</u>

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	pose a higher or lower money laundering and terrorist financing risk; -(f) the determination of whether the customer or the beneficial owner of the customer is a politically exposed person or family member or close associate of a politically exposed person; -(g) the identification of business relationships or occasional transactions involving natural or legal persons from high risk third countries; (iv) reporting, in particular reporting of suspicious transactions; (v) outsourcing and reliance on third parties;		<u>those transactions are unusual or suspicious and consequently should be reported.</u> 2. After point (vii) we suggest adding a reference to the monitoring process that should be performed by the internal audit function as third line of defence. Additionally, for those obliged entities that do not have in place the three lines of defence, an external expert review should be required, in order to ensure and strengthen their AML compliance. (vii bis) <u>the reviewing by the internal audit function as third line of defence or, for those obliged entities which do not have in place the three lines of defence model, the reviewing by an independent external expert.</u> DK:

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	(vi) ~~and record-retentionkeeping,~~ ~~the monitoring and management of~~ ~~compliance with such policies,~~ ~~controls and procedures,~~ as well as policies in relation to the processing of personal data pursuant to Article 55; (vii) the monitoring and management of compliance with such policies and procedures under the conditions set out in point b), the identification and management of deficiencies and the implementation of remedial actions; (viii) the verification, proportionate to the risks associated with the tasks and functions to be performed, when		(Comments): DK: For many smaller entities, outsourcing and reliance on third parties (v) is not relevant and it seems unnecessary to make it an obligation to include this in internal policies and procedures. The same applies for <i>(viii) the verification, proportionate to the risks associated with the tasks and functions to be performed, when recruiting and assigning staff to certain tasks and functions and when appointing its agents and distributors, that those persons are of good repute, in accordance with Article 11 and (ix) the internal communication of the obliged entity's internal policies, procedures and controls, including to its agents and distributors and (x) a policy on the training of employees and, where relevant, its agents and distributors with regard to measures in place in the obliged entity to comply with the requirements of this Regulation,</i> <i>Regulation [please insert reference</i>

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	recruiting and assigning staff to certain tasks and functions and when appointing its agents and distributors, that those persons are of good repute, in accordance with Article 11; (ix) the internal communication of the obliged entity's internal policies, procedures and controls, including to its agents and distributors; (x) a policy on the training of employees and, where relevant, its agents and distributors with regard to measures in place in the obliged entity to comply with the requirements of this Regulation, Regulation [please insert reference – proposal for a		– proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final], any other legal provisions adopted for the implementation of these Regulations and any administrative act issued by any supervisor, in accordance with Article 10. This regulation applies to a variety of obliged entities, and thousands of them consist of very small entities, where these requirements are disproportionate. DE: (Comments): The wording of paragraph 1 (“shall have in place policies, controls and procedures (hereinafter shortened to PCP)”), and the wording of paragraph 2 (a) (“PCP shall include the development of internal PCP”) seems somewhat circular. We suggest to add after “including in particular” the word “in relation to”.

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	<i>recast of Regulation (EU) 2015/847 - COM/2021/422 final</i>], any other legal provisions adopted for the implementation of these Regulations and any administrative act issued by any supervisor, in accordance with Article 10.		As to the term “risk management framework” used in (a) (ii), the intention seems to be to align it with prudential terminology. However, the term “framework” seems more suitable with regard to Article 8 and would be the basis for determining what procedures and practices should be required. GER suggests to add the following words after “any administrative act issued by a supervisor”: “based on the legal provisions mentioned before”.
(b) policies, controls and procedures to identify, scrutinise and manage business relationships or occasional transactions that pose a higher or lower money laundering and terrorist financing risk;	(b) ~~policies, controls and procedures to identify, scrutinise and manage business relationships or occasional transactions that pose a higher or lower money laundering and terrorist financing risk;~~ internal controls that include at least:		DK: (Comments): DK: We disagree that the three lines of defense should apply for all obliged entities. This is a concept that is well established in the banking sector, and makes sense there, but we must be mindful that this regulation applies to a wide variety of obliged entities. We are worried

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			that the amendments made in art. 8 (4) is not sufficient to handle the problem in the period from the regulation enters into force and until the guidelines are applicable.
	(i) controls performed by operational functions in the field of AML-/CFT, including AML-/CFT related tasks carried out by commercial functions;		
	(ii) controls performed by the compliance functions pursuant to Article 9 other than those referred to in point (b) (i), to ensure the implementation of the policies and procedures referred to in point (a) and controls referred to in point (b) (i) across		

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	all obliged entity's activities, including activities carried out by agents and distributors or outsourced to external service providers;		
(c) an independent audit function to test the internal policies, controls and procedures referred to in point (a);	(e) <u>(iii)</u> an independent audit function to test the internal policies, controls and procedures referred to in point (a); <u>and the controls referred to in point (b) (i) and (ii).</u>		HR: (Comments): HR This is an issue of a major concern for us, depending on how this obligation is interpreted: - If this is meant to be an <u>internal</u> independent audit function that all OEs are obliged to establish as a continuous internal control function, then we find this to be a disproportionate requirement. - If the intention is that an independent auditor/service provider (internal or external) needs to

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			periodically test internal policies, controls and procedures of OEs then we agree with such a requirement (though the frequency should be different depending on the size and risk profile of the OE). We urge the Presidency to open a dedicated discussion on the proposal that even the smallest and least risky OEs will be obliged to establish an internal audit function for AML/CFT purposes only. We would like to once again point out that under its basic regulations many non-banking financial sector entities are exempted from the obligation to establish such a function, due to their size and risk profile, and that no non-financial entities have such a requirement in place. These same entities may also be part of the sector/activity assessed as low-risk from AML/CFT perspective. In this

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			regard, we consider that the imposition of this obligation on such entities is disproportionate, even if the outsourcing of functions is allowed. OEs that do not have an obligation to establish an internal audit function under their basic regulations and that do not have higher AML/CFT risks should be able to be exempt from the obligation to establish an <u>internal</u> audit function for AML/CFT purposes only. There are alternative options that could be explored, such as the obligation to engage an external auditor periodically, which we believe would be in line with FATF recommendations (specifically R.18 and its interpretative note). The exemption could be subject to the approval and assessment of the competent authority. DK: (Comments): DK:

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			For many smaller entities, the requirement of having an independent audit function is disproportionate. We would suggest the following wording: <i>(iii) where appropriate with regard to the size and nature of the business, an independent audit function to test the internal policies, ~~controls~~ and procedures referred to in point (a) <u>and the controls referred to in point (b) (i) and (ii).</u></i>
(d) the verification, when recruiting and assigning staff to certain tasks and functions and when appointing its agents and distributors, that those persons are of good repute, proportionate to the risks associated with the tasks and functions to be performed;	~~(d) the verification, when recruiting and assigning staff to certain tasks and functions and when appointing its agents and distributors, that those persons are of good repute, proportionate to the risks associated with the tasks and functions to be performed;~~		

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(e) the internal communication of the obliged entity's internal policies, controls and procedures, including to its agents and distributors;	~~(e) the internal communication of the obliged entity's internal policies, controls and procedures, including to its agents and distributors;~~		
(f) a policy on the training of employees and, where relevant, its agents and distributors with regard to measures in place in the obliged entity to comply with the requirements of this Regulation.	~~(f) a policy on the training of employees and, where relevant, its agents and distributors with regard to measures in place in the obliged entity to comply with the requirements of this Regulation.~~		
The internal policies, controls and procedures set out in the first subparagraph, points (a) to (f) shall be recorded in writing. The senior management shall approve those policies controls and procedures.	The internal policies, ~~controls and~~ procedures and controls set out in the first subparagraph, ~~points (a) to~~ ~~(f)~~ shall be recorded in writing. ~~The senior management shall approve those policies controls and~~		IT: (Comments): We wonder whether the approval of the policies should be a responsibility of the management body in its supervisory function (MBSS) (which also monitors and supervises their implementation

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	~~procedures~~ Those policies shall be approved by the management body in its management function. Internal procedures, including controls, shall be approved, at least, by the AML compliance officer. The type and extent of controls set out in point b) should be commensurate to the risk of money laundering and terrorist financing and the size of the business.		and the management decision making of the obliged entity), rather than of the management body in its management function (MBMF), which should be responsible for implementing those policies, procedures and controls in the obliged entity. Otherwise, the MBMF would be in charge of both approving/reviewing the policies and implementing them: this however, would imply that there is no dialectic relationship on this matter, at the management body level. BE: (Comments): NBB: 1) the internal policies and controls can not be approved and applied by the AML compliance officer, but should be approved by a higher level -> we suggest to revise the text as following: “The internal policies, procedures and controls set out in the first subparagraph shall be recorded in

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			writing. Those policies shall be approved by the management body in its management function. Internal procedures ~~and, including~~ controls, shall be approved, at least, by the AML compliance <u>manager officer</u>.” 2) Last sentence of article 7(2) repeats partly what is already stated in Article 7(1) , paragraph 2 and thus has no added value. It should be deleted. -> »~~The type and extent of controls set out in point b) should be commensurate to the risk of money laundering and terrorist financing and the size of the business.~~” ES: (Comments): With regards to the proportionality principle: i) They way in which the proportionality principle has been introduced does not clearly state, in our opinion, that small or low risk

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			obliged entities are allowed not to establish the 3 lines of defense as foreseen in paragraph b) (e.g. some non-financial obliged entities might not have sufficient structure to set out an internal audit function). ii) Should be based on the ML/TF risk <u>or</u> the size (not necessary to meet both) In addition, when according to the proportionality criteria, obliged entities might not implement the three lines of defence, the AMLR should require them to be subject to an independent third party review, which assesses the adequacy and effectiveness of the policies, procedures and internal controls. Please consider, that in many cases obliged entities do not have the obligation to count with the three lines of defence (for example, obliged entities not subject to prudential rules may not be obliged to appoint a compliance officer or a head of the internal audit function).

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			In these cases an external expert review would strengthen the AML compliance of the obliged entity and for example, would make easier for non financial business to make business with credit or financial institution as this independent third party's revision would make non financial business more reliable. DE: (Comments): Senior management approval should cover, in particular, the question of PCP being proportionate and adapted to the OE's identified risk. The internal policies, controls and procedures set out in the first subparagraph shall take into account the risk assessment pursuant to Article 8 and shall be recorded in writing. The senior management shall approve those policies, controls and procedures.
			DE:

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			(Comments): Compliance with targeted financial sanctions is in practice (at least in the financial sector) already embedded in measures according to Art. 7 (2) and (3) of the draft regulation. Therefore, GER suggests clarification that already existing targeted financial sanctions structures can be used for required measures with regard to proliferation finance-targeted financial sanctions.
3. The obliged entities shall keep the policies, controls and procedures up to date, and enhance them where weaknesses are identified.	3. The obliged entities shall keep the policies, ~~controls and~~ procedures <u>and controls</u> up to date, and enhance them where weaknesses are identified.		ES: (Comments): We consider important to emphasize not only that entities shall keep the policies, procedures and controls up to date, but also that entities shall revise them regularly (as it is required for the business-wide risk assessment by this Regulation). This regular revision is a way to identify the necessity of updating them. See below our proposal:

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			<i>"The obliged entities shall keep the policies, procedures and controls up to date, <u>revise them periodically</u> and enhance them where weaknesses are identified"</i>
4. By [2 years after the entry into force of this Regulation], AMLA shall issue guidelines on the elements that obliged entities should take into account when deciding on the extent of their internal policies, controls and procedures.	4. By [2 years after the entry into force of this Regulation], AMLA shall issue guidelines on the elements that obliged entities should take into account, based on the nature and complexity of their business, size and the risks they are exposed to , when deciding on the extent of their internal policies, ~~controls and~~ procedures and controls .		DE: (Comments): The words "based on" should be replaced with "proportionate to" in order to make clear that the risk-based approach should be applied by AMLA when establishing the RTS.
Article 8	Article ~~8~~ 7		

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Risk assessment	~~Risk~~ Business-wide risk assessment		
1. Obligated entities shall take appropriate measures, proportionate to their nature and size, to identify and assess the risks of money laundering and terrorist financing to which they are exposed, as well as the risks of non-implementation and evasion of proliferation financing-related targeted financial sanctions, taking into account:	1. Obligated entities shall take appropriate measures, proportionate to their ~~nature~~ and size, as well as to the nature and complexity of their business , to identify and assess the risks of money laundering and terrorist financing to which they are exposed, as well as the risks of non-implementation and evasion of proliferation financing-related targeted financial sanctions, taking into account at least :		DE: (Comments): GER suggests to review any reference to the risks of non-implementation and evasion of proliferation financing-related targeted financial sanctions. While it is mentioned here, the risk variables and "lower" or "higher" risk factors listed in Appendices I through III focus heavily on AML/TF and do not adequately address the specific FATF requirements and risk factors on PF such as export of dual use items etc.

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(a) the risk variables set out in Annex I and the risk factors set out in Annexes II and III;	(a) the risk variables set out in Annex I and the risk factors set out in Annexes II and III;		DE: (Comments): See our comment above.
(b) the findings of the supra-national risk assessment drawn up by the Commission pursuant to Article 7 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> ;	(b) the findings of the supra-national risk assessment drawn up by the Commission pursuant to Article 7 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> ;		DE: (Comments): Since the NRA has to take into account the SNRA, separate mentioning of the latter seems superfluous. Moreover, from a practical point of view, documentation of the SNRA is not available in all official languages of the Member States so that any reference to them is difficult, namely for smaller OEs/OEs outside the financial sector.
(c) the findings of the national risk assessments carried out by the Member States pursuant to Article 8 of <i>[please insert reference – proposal for 6th Anti-Money</i>	(c) the findings of the national risk assessments carried out by the Member States pursuant to Article 8 of Directive <i>[please insert reference – proposal for 6th Anti-</i>	Technical amendment.	

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<i>Laundering Directive - COM/2021/423 final</i>].	<i>Money Laundering Directive - COM/2021/423 final</i>]-;		
	(d) ~~The the~~ relevant information ~~for AML-CFT purposes~~ published by international standard setters ~~in the AML/CFT area~~ or, at European level, by the Commission or by AMLA;	Technical amendment.	DE: (Comments): GER would like to remind that any documents that obliged entities are required to take into account for risk assessment purposes should be available as translation into the EU's official languages and published by AMLA on a website or other suitable location.
	(e) ~~The the~~ information on money laundering and terrorist financing risks provided by national competent authorities.		DE: (Comments): GER would like to remind that any documents that obliged entities are required to take into account for risk assessment purposes should be available as translation into the EU's official languages and published by AMLA on a website or other suitable location.

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	Prior to the launch of new products, services or business practices, including the use of new delivery channels and new or developing technologies, in conjunction with new or pre-existing products and services or before starting to provide an existing service or product to a new customer segment or in a new geographical area, obliged entities shall identify and assess, in particular, the related money laundering and terrorist financing risks and take appropriate measures to manage and mitigate those risks.		NL: (Comments): 1a. Prior to the launch of new products, services or business practices, including the use of new delivery channels and new or developing technologies, in conjunction with new or pre-existing products and services or before starting to provide an existing service or product to a new customer segment or in a new geographical area, obliged entities shall identify and assess, in particular, the related money laundering and terrorist financing risks and take appropriate measures to manage and mitigate those risks. Such an assessment shall be documented and made available to supervisors upon request.

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2. The risk assessment drawn up by the obliged entity pursuant to paragraph 1 shall be documented, kept up-to-date and made available to supervisors.	2. The business-wide risk assessment drawn up by the obliged entity pursuant to paragraph 1 shall be documented, kept up-to-date and regularly reviewed, including where any internal or external event significantly affect the ML/TF risks associated ~~to~~ with the activities, products, transactions, delivery channels, customers or geographical zones of activities of the obliged entity. It shall be made available to supervisors upon request .		DE: (Comments): The risk assessment is different from day-to-day operations. Its approval should thus be more a management decision than alone in the hands of the compliance officer. Otherwise, the management level may be able to deny any responsibility with regard to the risk assessment or deficiencies of it, respectively.
	The business-wide risk assessment ~~is~~ shall be approved by the AML compliance officer and communicated to the	Technical amendment.	SI: (Comments): The additional subparagraph under Article 8(2) should in our view be redrafted in order to provide for the

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	management body in its management function and, where such body exists, to the management body in its supervisory function.		management body to approve the business-wide risk assessment, rather than the compliance officer. The compliance officer is certainly responsible for approving the procedures and controls and for the day-to-day implementation, which is all based on the risk assessment. We also see it fit that the compliance officer prepares/coordinates/proposes the risk assessment. But this does not imply that the compliance officer has also to approve the risk assessment. We see it appropriate that the management body is the right body to approve the risk assessment. Therefore, we propose the following wording for the additional subparagraph: <i>“The business-wide risk assessment is approved proposed by the AML compliance officer and ~~communicated~~ approved by to the management body in its management function, and, where such body exists, communicated to the management body in its supervisory function.”</i>

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			BE: (Comments): NBB: We cannot support the approval of the business-wide risk assessment by the AML Compliance Officer, because there is a high risk that, in that case, it will be the same person who carries out the risk assessment that will also approve it, namely the AML Compliance Officer. Consequently, we are maintaining our initial proposal, which consists in the business-wide risk assessment being approved by the Compliance manager, while supporting the Presidency's suggestion providing for that it should also be communicated to the management body. BG: (Comments): Suggest to add that the risk assessment is not only communicated to the management body, but also that it should

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			approve the risk assessment in order to ensure their involvement. We don't see why the Presidency's considers that it is not appropriate to have the management body approve the risk assessment "<i>since the risk assessment is communicated to the management body, this body has the possibility to ask the compliance officer to modify its risk assessment when necessary.</i>". The management body's approval doesn't mean that the document will never change. Policies and procedures are approved by the management body but they always change. MT: (Comments): Under the now article 8, the BRA (as a policy listed under para 2(a)(i)) is to be approved by the management body in its management function. Yet here it is stated that it should be approved by the AML compliance officer and communicated to management body

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			in its management and supervisory function. MT is of the opinion that this subparagraph should be amended in order to ensure that the BRA is approved by the management body. In this manner, the management body will be required to take ownership and responsibility of such assessment, particularly when considering that: (i) the obligation to draw up the risk assessment is an obligation which is imposed on the OE, and no one is better placed to represent the OE than the management body and; (ii) the BRA is in essence a matter of policy which is something that the management body should not only be aware of but should also have the ability to approve or not.
3. Supervisors may decide that individual documented risk assessments are not required where	3. With the exception of credit institutions, financial institutions, crowdfunding		DK: (Comments): DK:

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the specific risks inherent in the sector are clear and understood.	service providers and third-party financing intermediaries, Supervisors may decide that individual documented risk assessments are not required where the specific risks inherent in the sector are clear and understood.		We do not see the advantage of this provision, and we wonder how it should be decided when risks inherent in the sector is clear and understood. DE: (Comments): We support this drafting. MT: (Comments): MT is of the view that this power given to supervisors should not be restricted and limited to specific DNFBPs since it is already limited in its application on the following grounds: (1) any exemption to this effect can only take place following the carrying out of risk assessment; (2) based on the results of this risk assessment, a decision is taken by the national supervisor to propose to the European CION whether such exemption in the national MS is to take place; and

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			(3) only after this full approval process is carried out, can such an exemption be implemented at national level.
	3a. By [2 years from the entry into force of this Regulation], AMLA shall issue guidelines on the minimum requirements as regards for the content of the business-wide risk assessment drawn up by the obliged entity pursuant to paragraph 1.	Technical amendment.	BE: (Comments): NBB: As regard the content of the business-wide risk assessment: we primarily support the text of Article 8 to be revised, in order to see <u>clarified in the level 1 rules the content of the risk assessment</u> , with a flexible approach consisting in limiting the list of the elements to be taken into account to the minimum ones, that is to say the ones provided for in Recommendation 1 of the FATF, that implies the obligation to take into account : (i) the characteristics of the customers, (ii) the products, services or transactions offered by the OE,

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			(iii) the countries or geographical areas concerned, and (iv) the distribution channels used by the OE. We are concerned about the fact that the current text of the rulebook already refers to very many RTS, ITS and guidelines to be produced by AMLA, in a limited period of time, which risks impacting the degree of technical quality of the rules to be enacted. Therefore, we are not in favor of mandating AMLA for the development of other RTS or guidelines. However, if the option we suggest is not followed, we could live with the one suggested by the Presidency. ➔ Drafting suggestion as regard paragraph 1: “1. Obligated entities shall take appropriate measures, proportionate to their nature and size, to identify and assess the risks of money laundering and terrorist financing to which they are exposed, as well as the risks of non-implementation and evasion of proliferation financing-related targeted

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			financial sanctions, <u>considering the characteristics of their customers, the products, services or transactions offered by em, the countries or geographical areas concerned and the distribution channels used by them, and</u> taking into account: [...]”
Article 9	Article 9		NL: (Comments): We believe it would be usefull to oblige OEs to immediately report any (major) AML/CFT related incidents to the AML/CFT supervisor. The compliance manager would be tasked with reporting the AML/CFT incident. The OE should have in place policies and procedures for the reporting of (major) AML/CFT incidents.
Compliance functions	Compliance functions		
1. Obligated entities shall appoint one executive member of their board of directors or, if there is no board, of its equivalent governing body who shall be	1. Obligated entities shall appoint one ~~executive~~ member of ~~their board of directors or, if there is no board, of its equivalent~~ governing body who shall be		ES: (Comments): In line with our strongly reiterated requests, a reference to the compliance with the AML/CFT national provision, which would be

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responsible for the implementation of measures to ensure compliance with this Regulation ('compliance manager'). Where the entity has no governing body, the function should be performed by a member of its senior management.	~~responsible for the implementation of measures~~ the management body in its management function who is responsible to ensure compliance with this Regulation, the Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final], any other legal provisions adopted for the implementation of these Regulations and any administrative act issued by any supervisor ('compliance manager'). ~~Where the entity has no governing body, the function should be performed by a member of its senior management.~~ To this end, the compliance manager		complementary to this Regulation, should be included . DE: (Comments): Remark: The referral or information of the supervisory authority should be provided for in case of appointment, exemption or dismissal of the appointee. For groups with branches in several member states, a contact person in each member states should be provided for.

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	shall ensure that the obliged entity's policies, procedures and controls are consistent with the AML/CFT risk exposure and that they are implemented, with sufficient human and material resources. The compliance manager shall receive information on significant or material weaknesses in such policies, procedures and controls.		
2. The compliance manager shall be responsible for implementing the obliged entity's policies, controls and procedures and for receiving information on significant or material weaknesses in such policies, controls and	2. ~~The compliance manager shall be responsible for implementing the obliged entity's policies, controls and procedures and for receiving information on significant or material weaknesses in such policies, controls and~~		

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procedures. The compliance manager shall regularly report on those matters to the board of director or equivalent governing body. For parent undertakings, that person shall also be responsible for overseeing group-wide policies, controls and procedures.	~~procedures. The compliance manager shall regularly report on those matters to the board of director or equivalent governing body. For parent undertakings, that person shall also be responsible for overseeing group-wide policies, controls and procedures.~~ Where the management body in its management function is a body collectively responsible for its decisions, the compliance manager is in charge to assist and advise it and to prepare the decisions referred to in this Article.		
3. Obligated entities shall have a compliance officer, to be appointed	3. Obligated entities shall have a an AML compliance officer, to be	Clarification of the wording on request of some member states.	IT: (Comments):

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by the board of directors or governing body, who shall be in charge of the day-to-day operation of the obliged entity's anti-money laundering and countering the financing of terrorism (AML/CFT) policies. That person shall also be responsible for reporting suspicious transactions to the Financial Intelligence Unit (FIU) in accordance with Article 50(6).	appointed with sufficiently high hierarchical standing by the ~~board of directors or governing body~~ management body in its management function , who shall be ~~in charge of~~ responsible for the policies, procedures and controls in the day-to-day operation of the obliged entity's anti-money laundering and countering the financing of terrorism (AML/CFT) ~~policies~~ . That person shall also be responsible for reporting suspicious transactions to the Financial Intelligence Unit (FIU) in accordance with Article 50(6).		We submit the following observations on this provision: 1) In our view, the compliance officer should be appointed by the management body in its supervisory function (and, at the same time, must not be removed without the prior approval of the management body in its supervisory function). 2) We think that the wording day-to-day operation could be misleading; we would prefer substitute it with an expression clearer referred to the second-line of defense, to which the CO belongs. For example, it could be useful to take a cue from the expression used in the EBA GL AMLCO (the AML/CFT compliance officer should be responsible for monitoring whether the measures, policies, controls and procedures implemented by the ~~credit or financial institution~~ obliged entity comply with ~~the credit or financial institution's~~ the obliged entity's AML/CFT obligations).

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			ES: (Comments): ok MT: (Comments): As drafted, the compliance officer is responsible for the day-to-day operations of the OEs from an AML/CFT perspective and also to report suspicious transactions to the FIU. MT would suggest making allowance to the possibility that reporting of STRs is entrusted to another officer of the obliged entity who would be responsible only for interactions with the FIU, i.e., having the responsibility to file STRs and reply to requests for information from the same. MT believes that this would be especially relevant in larger entities.
In the case of obliged entities subject to checks on their senior management or beneficial owners	In the case of obliged entities subject to checks on their senior management or beneficial owners	Technical amendment.	DE: (Comments):

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
pursuant to Article 6 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> or under other Union acts, compliance officers shall be subject to verification that they comply with those requirements.	pursuant to Article 6 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> or under other Union acts, AML compliance officers shall be subject to verification that they comply with those requirements.		This provision seems overly complex. Please clarify to which persons (the compliance officer or the senior management/BO of the OE) the “fit and proper” requirement applies and, if the latter, what the compliance officer’s role should be in this context.
An obliged entity that is part of a group may appoint as its compliance officer an individual who performs that function in another entity within that group.	Where justified by the size, the nature or the risks of its activities, an ~~An~~ obliged entity that is part of a group may appoint as its AML compliance officer an individual who performs that function in another entity within that group.	Technical amendment.	IT: (Comments): We wonder whether the appointment of a compliance officer in another entity is considered a kind of outsourcing intra-group of the AMLCO function. BG: (Comments): There should be more specific criteria specifying in which cases a person can be a AML compliance

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Replies from: HR SI HU NL IT EE AT BE SE FR ES FI LV IE DK (rev) BG DE LT MT

Updated: 08/11/2022 15:56

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			officer in more than one entity within a group. AMLA could develop RTS or supervisors can decide. (On our point of view this – may be acceptable only when both the entities are situated in one and the same Member State.) Additionally, propose that the AML compliance officer can be appointed to more than one entity of the same group, only if those entities are located in the same country, as it would be important for authorities to be able to communicate with the person easily.
4. Obligated entities shall provide the compliance functions with adequate resources, including staff and technology, in proportion to the size, nature and risks of the	4. Obligated entities shall provide the compliance functions with adequate resources, including staff and technology, in proportion to the size, nature and risks of the		DE: (Comments): Please consider to exempt the compliance officer, where relevant, from the employer's right to issue instructions; this should namely cover ST-Reporting.

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
obliged entity for the implementation of compliance functions, and shall ensure that the powers to propose any measures necessary to ensure the effectiveness of the obliged entity's internal policies, controls and procedures are granted to the persons responsible for those functions.	obliged entity for effective performance of their tasks , ~~the implementation of compliance functions~~ , and shall ensure that the persons responsible for those functions are granted the powers to propose any measures necessary to ensure the effectiveness of the obliged entity's internal policies, procedures and controls and ~~procedures are granted to the persons responsible for those functions~~ .		
	Obligated entities shall ensure that the AML compliance officer and the person responsible of the audit function referred to in Article 8 paragraph(2) (b) (iii) of	Clarification of the wording on request of some member states.	IT: (Comments): We have the following concerns: 1) it is not clear how rules related to the "person responsible of the audit function referred to in par. b) iii) of article 7" can be included in article

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	can report directly to management body in its management function and, where such a body exists, to management body in its supervisory function, independent from senior management, and can raise concerns and warn the management body, where specific risk developments affect or may affect the entity. Obligated entities shall take measures to ensure that the AML compliance officer's decisions are not harmed or unduly influenced by commercial interests of the obliged entity and that it is protected against retaliation,		9, which deals only with the AML compliance functions. More in general, we believe that the whole structure of the articles on control functions should be revised to ensure more consistency, for example by including a (new) specific article setting the requirements of control functions or by adding a paragraph in article 7 (referring to II- and III-level control functions). We suggest to separate provisions regarding: - internal audit function - compliance manager - compliance officer - other staff. 2) As regards the third subparagraph, we believe that the management body should ensure that the compliance officer decisions are respected and followed by the organisation, setting the proper “tone from the top” and putting this officer in an appropriate hierarchical and organisational position. Otherwise, it should be clarified who is in charge of ensuring protection to the

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	discrimination and any other unfair treatment. The AML compliance officer can only be removed by the management body in its management function after previous information of the management body in its supervisory function, where such a body exists. Obligated entities shall ensure that the persons directly or indirectly participating in implementation of this Regulation, the Regulation <i>[please insert reference – proposal for a recast of Regulation (EU) 2015/847 – COM/2021/422 final]</i>, any other legal provisions adopted for the implementation of these Regulations and any		compliance officer against “retaliation, discrimination and any other unfair treatment” and how this should be implemented in the obliged entity. 3) In the third subparagraph, we fully agree on the provisions on appointment/removal of the compliance officer but we think – as underlined above – that the appointment and the removal should be done by the management body in its supervisory function, where such a body exists. 4) Finally, we do not understand who are the persons referred to in the new subparagraph 4 (i.e. «the persons directly or indirectly participating in implementation of this Regulation»). If our understanding is correct, it is referred to any staff member involved in internal control system. ES: (Comments): ok DK:

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	administrative act issued by any supervisor, have unrestricted access to all information and data necessary to their tasks.		(Comments): DK: As noted under art. 7 (2) c, we find that the requirement of having an internal audit function is disproportionate for very many small obliged entities. This has a spillover effect on this provision. Therefore, we strongly believe that the proposed modification in art. 7 (2) c, taking size and nature of the business into account, should be considered, so we will avoid meaningless rules for small entities, who will ultimately be in danger of losing their business on account of these rules. DE: (Comments): The sentence regarding necessary protection mechanisms should be placed into a new paragraph. The wording should be corrected as follows: "... and that the <u>compliance officer</u> is protected against retaliation, discrimination and any other unfair treatment."

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			GER suggests to change the wording after “management function” as follows: “only after informing the management body in its supervisory function ...”. Please consider introducing provisions protecting compliance officers from relevant negative employment law consequences or internal discrimination.
5. The compliance manager shall submit once a year, or more frequently where appropriate, to the governing body a report on the implementation of the obliged entity’s internal policies, controls and procedures, and shall keep the management body informed of the outcome of any reviews. The governing body shall take the necessary actions to remedy any	5. The compliance manager shall regularly report on the implementation of the obliged entity’s policies, procedures and controls to the management body. In particular, the compliance manager shall submit once a year, or more frequently where appropriate, to the ~~governing~~ management body a report on the implementation of the obliged	Technical amendment.	DK: (Comments): DK: This requirement will for many small entities seem disproportionate. At least there should be a mentioning of “where appropriate” in the beginning of the provision, i.e.: “The compliance manager shall, <i>where appropriate</i>, regularly report[...]”

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
deficiencies identified in a timely manner.	entity's internal policies, procedures and controls ~~and~~ procedures drafted by the AML compliance officer , and shall keep ~~the that management~~ body informed of the outcome of any reviews. The compliance manager governing body shall take the necessary actions to remedy any deficiencies identified in a timely manner.		
6. Where the size of the obliged entity justifies it, the functions referred to in paragraphs 1 and 3 may be performed by the same natural person.	6. Where the size, nature or risks of the activities of the obliged entity justifies it, the functions referred to in paragraphs 1 and 3 may be performed by the same natural person.		IT: (Comments): As already objected in comments to art. 9(4) above, it is not clear to us why and how rules referring to the "a head of the internal audit" can be included in article 9, which deals only with the AML compliance functions. Again, we suggest to add a specific article or paragraph

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	An obliged entity subject to prudential rules requiring the appointment of a compliance officer or of a head of the internal audit function may entrust those persons with the functions and responsibilities as referred to in paragraph 3, first sub-paragraph and in Article 8, paragraph 2, point b, (iii). In cases of higher risks or where the size of the obliged entity justifies it, the responsibilities of controls performed by the compliance functions mentioned in point (b) (ii) of Article 8(2) of this Regulation and of the day-to-day operation of the obliged entity's anti-money laundering		dedicated to internal audit and to the provisions regarding the head of internal audit. Regarding the provision that the “functions referred to in paragraphs 1 and 3 may be performed by the same natural person”, it should be clarified how the combination of the two functions would work in practice: indeed, it is not clear whether the combination would result always in a member of the management body performing also the function of the compliance officer. In this case, the compliance manager should not have been assigned executive powers, to avoid any possible conflict of interest with the function of second-line of defense that belongs to compliance officer. We do not agree with the last amendment proposed. Indeed, in our view: 1) there is no need at all to specify that the second-level control function may include more than one person (i.e. two or more) to perform the tasks given to this function;

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	and countering the financing of terrorism (AML/CFT) policies may be carried by two different persons.		2) the responsibility for the second-level AML compliance function should be given to a single person, who is the head of the compliance function (i.e. the compliance officer). Of course, he/she may be helped by other person to perform his/her duties. However, the responsibility should lie with one compliance officer alone. Regarding the expression “day-to-day operations”, as underlined above, we think that it could be misleading, since it seems referred to first line of defense’s tasks. BE: (Comments): NBB: Overall support for the drafting of article 9 (some technical remarks raised earlier have been taken into account), but still <u>strong reservations on article 9.6 (amended by FR Pcy but unchanged by CZ Pcy)</u>, both the second and the third paragraph: i. <u>Second paragraph: the AML compliance function and the related tasks should always be</u>

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			<u>part of the second line of defence. We are therefore strongly opposed to attributing such tasks to the head of the internal audit function, which as third line of defence should control the compliance function.</u> We do agree that depending on the size and/or nature of the obliged entities, the obligation of an independent audit function may not be proportionate. However, in each case where an independent audit function is required by prudential rules, the audit scope of this function should include the AML/CFT mechanisms in place within the concerned obliged entity. This of course implies that no tasks of the AML/CFT compliance function can be entrusted to the head of the internal audit function. We therefore insist on deleting “<i>or a head of the internal audit function</i>” in the second paragraph of article 9(6).

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<u>Third paragraph:</u> Making a distinction within the compliance function itself between day-to-day operations and control functions seems rather artificial given that all the tasks of the AMLCO are related to the concrete steering of the AML/CFT policy in the obliged entity, be it through organizational measures, training, monitoring, STR reporting etc. It goes without saying that in larger institutions the AMLCO does not work alone and has direct reports, which already allows some kind of separation of tasks in practice. However, <u>making more than one person responsible for the function risks to result in (i) a dilution of responsibilities where it not entirely clear anymore who is responsible for what and (ii) in a loss of a holistic view on all aspects covered by the function.</u> For us it is clear that the final responsibility for this function lies with one person without prejudice to organize the function in light of the nature, size and complexity of the institution (this is by the way also

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			the case for other control functions which sometimes also entail more operational tasks, e.g. in the field of data protection). ES: (Comments): The functions of the AML compliance officer should never be combined with the head of internal audit function. Please see para. 65 EBA GL on AML compliance officers for financial institutions (65. <i>The independent audit function referred to in Article 8(4)(b) of Directive (EU) 2015/849 should not be combined with the AML/CFT compliance function</i>) and para. 176 of EBA GL on internal governance (<i>The internal audit function should not be combined with another internal control function</i>). BG: (Comments): The type of obliged entity should also be considered as a criterion. For example, having both a

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			compliance manager and compliance officer is appropriate for banks, payment institutions and e-money institutions. DE: (Comments): We have some concerns on using the term “two different persons” as proposed, as it should be more a functional attribution. Depending on the size, both functions might be attribute to significantly more than one person MT: (Comments): MT is still of the opinion that such paragraph should be supplemented only by the condition reflecting size, with smaller entities being able to have the role of a compliance manager and compliance officer performed by the same natural person. To this effect, MT is proposing the following amendments (in bold):

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			“6. Where the size, ~~nature or risks of the activities~~ of the obliged entity justifies it, the functions referred to in paragraphs 1 and 3 may be performed by the same natural person. An obliged entity subject to prudential rules requiring the appointment of a compliance officer or an ~~head of the~~ internal audit function may entrust those persons with the functions and responsibilities as referred to in paragraph 3, first sub-paragraph and in Article 8, paragraph 2, point b, (iii) ~~respectively, as long as the obliged entity is convinced that the appointed persons are able to carry out their duties for both functions in an efficient and effective manner.~~ [...]”
Where the obliged entity is a natural person or a legal person whose activities are performed by	Where the obliged entity is a natural person or a legal person whose activities are performed by		

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
one natural person only, that person shall be responsible for performing the tasks under this Article.	one natural person only, that person shall be responsible for performing the tasks under this Article.		
Continues in Table 2	Continues in Table 2	Continues in Table 2	Continues in Table 2

AML: AMLR proposal (2021/0239 COD)*First Presidency compromise*

Deadline: 21 October 2022 cob

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Updated: 28/10/2022 15:00

Following the feedback provided by delegations, the Czech Presidency is hereby submitting a first 4CT with amendments to the AMLR Annexes.

The changes introduced by CZ PRES are presented in **bold red (additions)** and black strikethrough (~~deletions~~). Explanations for these changes are included in the column "PCY Comment". MS views regarding these changes are most welcomed in the column "MS comment/drafting".

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
2021/0239 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (Text with EEA relevance)	2021/0239 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (Text with EEA relevance)		
ANNEX I	ANNEX I		
Indicative list of risk variables	Indicative list of risk variables		

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Replies from: HU AT FI IE

Updated: 28/10/2022 15:00

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
The following is a non-exhaustive list of risk variables that obliged entities shall take into account when drawing up their risk assessment in accordance with Article 8 determining to what extent to apply customer due diligence measures in accordance with Article 16:	The following is a non-exhaustive list of risk variables that obliged entities shall take into account when drawing up their risk assessment in accordance with Article 8 determining to what extent to apply customer due diligence measures in accordance with Article 16:		
(a) Customer risk variables:	(a) Customer risk variables:		
(i) the customer's and the customer's beneficial owner's business or professional activity;	(i) the customer's and the customer's beneficial owner's business or professional activity;		
(ii) the customer's and the customer's beneficial owner's reputation;	(ii) the customer's and the customer's beneficial owner's reputation;		AT: (Comments): We propose a deletion of (ii).

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Updated: 28/10/2022 15:00

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			It is questionable what information will be available in this regard, how it should be assessed and on basis of what sources. If reputation is a relevant factor on single- client basis according to widely known information that cannot be ignored the obliged entity should take it into account like other relevant circumstances, but it is questionable how it will contribute as a risk variable to a risk assessment according to Article 8.
(iii) the customer's and the customer's beneficial owner's nature and behaviour;	(iii) the customer's and the customer's beneficial owner's nature and behaviour;		AT: (Comments): We propose a deletion of "and behaviour". It is again questionable what information will be available in this regard, how behaviour of the customer and the customer's BO should be assessed and on basis of what sources. We also question the reference to nature, which is ill-

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Replies from: HU AT FI IE

Updated: 28/10/2022 15:00

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			defined and my cause problems with its application.
(iv) the jurisdictions in which the customer and the customer's beneficial owner are based;	(iv) the jurisdictions in which the customer and the customer's beneficial owner are based;		
(v) the jurisdictions that are the customer's and the customer's beneficial owner's main places of business;	(v) the jurisdictions that are the customer's and the customer's beneficial owner's main places of business;		
(vi) the jurisdictions to which the customer and the customer's beneficial owner have relevant personal links;	(vi) the jurisdictions to which the customer and the customer's beneficial owner have relevant personal links;		AT: (Comments): We propose a deletion of (vi). It is doubtful whether this information really exists in practice. Furthermore, a lot of personal links (Holidays? Relatives? Investment?) are possible, but their significance as ML/TF risk indicators is far less

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			obvious. Therefore it should not be mentioned in a list of risk variables. It might exist in some cases and if relevant the obliged entity should take it into account but it is questionable how it will contribute as a risk variable to a risk assessment according to Article 8.
(b) Product, service or transaction risk variables:	(b) Product, service or transaction risk variables:		
(i) the purpose of an account or relationship;	(i) the purpose of an account or relationship;		
(ii) the regularity or duration of the business relationship;	(ii) the regularity or duration of the business relationship;		AT: (Comments): We propose the deletion. We have seen that money launderers often use money mules that have long-established business relationships. Therefore, we don't think that this

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Replies from: HU AT FI IE

Updated: 28/10/2022 15:00

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			criterion is accurate in capturing risk.
(iii) the level of assets to be deposited by a customer or the size of transactions undertaken;	(iii) the level of assets to be deposited by a customer or the size of transactions undertaken;		
(iv) the level of transparency, or opaqueness, the product, service or transaction affords;	(iv) the level of transparency, or opaqueness, the product, service or transaction affords;		
(v) the complexity of the product, service or transaction;	(v) the complexity of the product, service or transaction;		
(vi) the value or size of the product, service or transaction.	(vi) the value or size of the product, service or transaction.		
(c) Delivery channel risk variables:	(c) Delivery channel risk variables:		

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Updated: 28/10/2022 15:00

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(i) the extent to which the business relationship is conducted on a non-face-to-face basis;	(i) the extent to which the business relationship is conducted on a non-face-to-face basis;		
(ii) the presence of any introducers or intermediaries that the customer might use and the nature of their relationship with the customer;	(ii) the presence of any introducers or intermediaries that the customer might use and the nature of their relationship with the customer;		
(d) Risk variable for life and other investment-related insurance:	(d) Risk variable for life and other investment-related insurance:		
(i) the risk level presented by the beneficiary of the insurance policy.	(i) the risk level presented by the beneficiary of the insurance policy.		
ANNEX II	ANNEX II		
Lower risk factors	Lower risk factors		

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Replies from: HU AT FI IE

Updated: 28/10/2022 15:00

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
The following is a non-exhaustive list of factors and types of evidence of potentially lower risk referred to in Article 16:	The following is a non-exhaustive list of factors and types of evidence of potentially lower risk referred to in Article 16:		
(1) Customer risk factors:	(1) Customer risk factors:		
(a) public companies listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means), which impose requirements to ensure adequate transparency of beneficial ownership;	(a) public companies listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means), which impose requirements to ensure adequate transparency of beneficial ownership;		
(b) public administrations or enterprises;	(b) public administrations or enterprises;		

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(c) customers that are resident in geographical areas of lower risk as set out in point (3);	(c) customers that are resident in geographical areas of lower risk as set out in point (3);		
(2) Product, service, transaction or delivery channel risk factors:	(2) Product, service, transaction or delivery channel risk factors:		
(a) life insurance policies for which the premium is low;	(a) life insurance policies for which the premium is low;		
(b) insurance policies for pension schemes if there is no early surrender option and the policy cannot be used as collateral;	(b) insurance policies for pension schemes if there is no early surrender option and the policy cannot be used as collateral;		
(c) a pension, superannuation or similar scheme that provides	(c) a pension, superannuation or similar scheme that provides		

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
retirement benefits to employees, where contributions are made by way of deduction from wages, and the scheme rules do not permit the assignment of a member's interest under the scheme;	retirement benefits to employees, where contributions are made by way of deduction from wages, and the scheme rules do not permit the assignment of a member's interest under the scheme;		
(d) financial products or services that provide appropriately defined and limited services to certain types of customers, so as to increase access for financial inclusion purposes;	(d) financial products or services that provide appropriately defined and limited services to certain types of customers, so as to increase access for financial inclusion purposes;		
(e) products where the risks of money laundering and terrorist financing are managed by other factors such as purse limits or	(e) products where the risks of money laundering and terrorist financing are managed by other factors such as purse limits or		

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Updated: 28/10/2022 15:00

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
transparency of ownership (e.g. certain types of electronic money);	transparency of ownership (e.g. certain types of electronic money);		
(3) Geographical risk factors — registration, establishment, residence in:	(3) Geographical risk factors — registration, establishment, residence in:		
(a) Member States;	(a) Member States;		
(b) third countries having effective AML/CFT systems;	(b) third countries having effective AML/CFT systems;		
(c) third countries identified by credible sources as having a low level of corruption or other criminal activity;	(c) third countries identified by credible sources as having a low level of corruption or other criminal activity;		
(d) third countries which, on the basis of credible sources such	(d) third countries which, on the basis of credible sources such		

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Replies from: HU AT FI IE

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
as mutual evaluations, detailed assessment reports or published follow-up reports, have requirements to combat money laundering and terrorist financing consistent with the revised FATF Recommendations and effectively implement those requirements.	as mutual evaluations, detailed assessment reports or published follow-up reports, have requirements to combat money laundering and terrorist financing consistent with the revised FATF Recommendations and effectively implement those requirements.		
ANNEX III	ANNEX III		
Higher risk factors	Higher risk factors		
The following is a non-exhaustive list of factors and types of evidence of potentially higher risk referred to in Article 16:	The following is a non-exhaustive list of factors and types of evidence of potentially higher risk referred to in Article 16:		
(1) Customer risk factors:	(1) Customer risk factors:		

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Replies from: HU AT FI IE

Updated: 28/10/2022 15:00

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(a) the business relationship is conducted in unusual circumstances;	(a) the business relationship is conducted in unusual circumstances;		
(b) customers that are resident in geographical areas of higher risk as set out in point (3);	(b) customers that are resident in geographical areas of higher risk as set out in point (3);		
(c) legal persons or arrangements that are personal asset-holding vehicles;	(c) legal persons or legal arrangements that are personal asset-holding vehicles;	To reflect contributions to initial questionnaire on AMLR Annexes from September 2021 (WK 10343/2021 ADD 1 REV 1).	FI: (Comments): Ok IE: (Comments): No comment on this arrangement.
(d) companies that have nominee shareholders or shares in bearer form;	(d) companies that have nominee shareholders or shares in bearer form;		AT: (Comments): An exception should be made for bearer shares subject to transparency . We propose to align

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			the wording with Art. 58(1) AMLR: “companies that have nominee shareholders or shares in bearer form, companies with securities listed on a regulated market or whose shares are issued as intermediated securities;”
(e) businesses that are cash-intensive;	(e) businesses that are cash-intensive;		HU: (Comments): The trade in precious metals and precious stones will be named separately in the regulations as a service provider category under the scope. If among the risk factors linked to the product, precious metals and precious stones are named as risky products, this will make it difficult for the authorities (supervisory risk assessment) and traders when preparing the risk assessment, since traders with precious metals will most likely only trade in precious metals, based on this, since the object of the transaction is a precious metal - or precious stone in the case of a gem

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			dealer, the transaction or the client will be riskier, regardless of the value limit or the actual transaction. For example, in the case of a dealer in precious metals, it does not matter whether he sells a silver necklace or a necklace made of platinum, since platinum is a more valuable and rare metal, so jewelry made from it is more expensive than jewelry made from the more common silver, or, for example, a deal related to an investment precious metal is riskier than selling a pair of wedding rings. In the case of a higher risk associated with the product, it should therefore be considered not to classify the entire precious metal or precious stone sector as risky simply because of its object, but to select the types of precious metal objects that pose an actual risk (for example investment precious metal, purchase of precious metal, but also in the case of works of art, the purchase of works of art) similarly to cultural goods, where it is detailed that not all works of art

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			are risky products, but only those of archaeological, historical, religious importance, etc.
(f) the ownership structure of the company appears unusual or excessively complex given the nature of the company's business;	(f) the ownership structure of the company appears unusual or excessively complex given the nature of the company's business;		
(g) customer is a third country national who applies for residence rights in a Member State in exchange of any kind of investment, including capital transfers, purchase or renting of property, investment in government bonds, investment in corporate entities, donation or endowment of an activity	(g) customer is a third country national who applies for residence rights in a Member State in exchange of any kind of investment, including capital transfers, purchase or renting of property, investment in government bonds, investment in corporate entities, donation or endowment of an activity		

Table 3 of 3

Replies from: HU AT FI IE

Updated: 28/10/2022 15:00

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
contributing to the public good and contributions to the state budget;	contributing to the public good and contributions to the state budget;		
(2) Product, service, transaction or delivery channel risk factors:	(2) Product, service, transaction or delivery channel risk factors:		
(a) private banking;	(a) private banking;		
(b) products or transactions that might favour anonymity;	(b) products or transactions that might favour anonymity;		
(c) payment received from unknown or unassociated third parties;	(c) payment received from unknown or unassociated third parties;		
(d) new products and new business practices, including new delivery mechanism, and the use	(d) new products and new business practices, including new delivery mechanism, and the use		

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Replies from: HU AT FI IE

Updated: 28/10/2022 15:00

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
of new or developing technologies for both new and pre-existing products;	of new or developing technologies for both new and pre-existing products;		
(e) transactions related to oil, arms, precious metals, tobacco products, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare scientific value, as well as ivory and protected species;	(e) transactions related to oil, arms, precious metals or stones , tobacco products, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare scientific value, as well as ivory and protected species;	To reflect contributions to initial questionnaire on AMLR Annexes from September 2021 (WK 10343/2021 ADD 1 REV 1).	FI: (Comments): Ok
(3) Geographical risk factors:	(3) Geographical risk factors:		
(a) third countries subject to increased monitoring or otherwise identified by the FATF due to the	(a) third countries subject to increased monitoring or otherwise identified by the FATF due to the		

Table 3 of 3

Replies from: HU AT FI IE

Updated: 28/10/2022 15:00

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
compliance weaknesses in their AML/CFT systems;	compliance weaknesses in their AML/CFT systems;		
(b) third countries identified by credible sources/ acknowledged processes, such as mutual evaluations, detailed assessment reports or published follow-up reports, as not having effective AML/CFT systems;	(b) third countries identified by credible sources/ acknowledged processes, such as mutual evaluations, detailed assessment reports or published follow-up reports, as not having effective AML/CFT systems;		
(c) third countries identified by credible sources/ acknowledged processes as having significant levels of corruption or other criminal activity;	(c) third countries identified by credible sources/ acknowledged processes as having significant levels of corruption or other criminal activity;		
(d) third countries subject to sanctions, embargos or similar	(d) third countries subject to sanctions, embargos or similar		

Table 3 of 3

Replies from: HU AT FI IE

Updated: 28/10/2022 15:00

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
measures issued by, for example, the Union or the United Nations;	measures issued by, for example, the Union or the United Nations;		
(e) third countries providing funding or support for terrorist activities, or that have designated terrorist organisations operating within their country.	(e) third countries providing funding or support for terrorist activities, or that have designated terrorist organisations operating within their country.		
End	End	End	End

Following the feedback provided by delegations, the Czech Presidency is hereby submitting a first 4CT with amendments to the AMLR proposal.

The changes introduced by FR PRES are presented in black **bold (additions)** and black strikethrough (~~deletions~~). The changes introduced by CZ PRES are presented in **bold red (additions)** and black strikethrough (~~deletions~~). Explanations for these changes are included in the column "PCY Comment". MS views regarding these changes are most welcomed in the column "MS comment/drafting".

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Article 10	Article 10		
Awareness of requirements	Awareness of requirements		
Obligated entities shall take measures to ensure that their employees whose function so requires, as well as their agents and distributors are aware of the requirements arising from this Regulation and of the internal policies, controls and procedures in place in the obliged entity, including in relation to the processing of personal data	Obligated entities shall take measures to ensure that their employees or person in comparable position whose function so requires, ~~as well~~ as including their agents and distributors are aware of the requirements arising from this Regulation , the Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422	Amendment to reflect terminological changes in Article 7.	ES: (Comments): Managers, and not only employees or those in comparable positions, should also be also aware of the AML/CFT requirements, business wide risk assessment, internal policies, procedures and controls. Therefore, ‘managers’ should be specifically mentioned in this article [as they are mentioned in article 11a)] : “Obligated entities shall take measures to ensure that their managers , employees or person in comparable position whose function so requires, ...” Additionally, we suggest clarifying what is meant by ‘person in comparable position’

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
for the purposes of this Regulation.	<i>final</i>], any other legal provisions adopted for the implementation of these Regulations and any administrative act issued by any supervisor, and of the business wide risk assessment , internal policies, ~~controls and~~ procedures and controls in place in the obliged entity, including in relation to the processing of personal data for the purposes of this Regulation.		DK: (Comments): The Danish Gambling Authority (DGA) suggests giving a definition of the terms “agents and distributors” in the AMLR, since it is not clear, who is covered by these terms in relation to article 10 and 11. It is for example unclear whether an <u>external</u> retailer of land-based betting is to be considered as a distributor to a provider of gambling services (the obliged entity) in this connection.
The measures referred to in the first subparagraph shall include the participation of employees in specific,	The measures referred to in the first subparagraph shall include the participation of employees or person in		ES: (Comments): We would suggest to require training programmes to be documented in annual plans in order to ensure that they are up-to-date (and monitor by the audit function):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
ongoing training programmes to help them recognise operations which may be related to money laundering or terrorist financing and to instruct them as to how to proceed in such cases. Such training programmes shall be duly documented.	comparable position, including agents and distributors, in specific, ongoing training programmes to help them recognise operations which may be related to money laundering or terrorist financing and to instruct them as to how to proceed in such cases. Such training programmes shall be appropriate to their functions or activities and to the risks of money laundering and terrorist financing to which the obliged entity is exposed and shall be duly documented.		“Such training programmes shall be appropriate to their functions or activities and to the risks of money laundering and terrorist financing to which the obliged entity is exposed and shall be duly documented in annual training plans approved by, at least, the AML Compliance Officer ”

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Article 11	Article 11		
Integrity of employees	Integrity of employees		
1. Any employee of an obliged entity entrusted with tasks related to the obliged entity's compliance with this Regulation and Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final] shall undergo an assessment approved by the compliance officer of:	1. Any employee, or person in a comparable position, including agents and distributors , of an obliged entity ~~entrusted with tasks related to the obliged entity's compliance with~~ directly participating in the implementation of the requirements of this Regulation, the and Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422	For the sake of consistency agents and distributors have been added.	ES: (Comments): Managers should also be under the scope of this article, and therefore they should be mentioned expressly [as they are mentioned in article 11a)] in order to avoid their exclusion: “Any <u>manager</u>, employee, or person in a comparable position, including agents and distributors ...” Additionally, as mentioned above, we suggest clarifying what is meant by ‘person in comparable position’ DK: (Comments): The Danish Gambling Authority (DGA) suggests giving a definition of the terms “agents and distributors” in the AMLR, since it is not clear, who is covered by these terms in relation to article 10 and 11. It is for example unclear

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	<i>final]</i> and any other legal provisions adopted for the implementation of these Regulations and any administrative act issued by any supervisor, shall undergo an assessment commensurate with the risks associated to with the tasks performed and whose content is approved by the AML compliance officer of:		whether an <u>external</u> retailer of land-based betting is to be considered as a distributor to a provider of gambling services (the obliged entity) in this connection. BG: (Comments): Propose to clarify that, even though the compliance officer is responsible for setting the assessment criteria, he/she should not perform the assessment himself, as this may be too burdensome.
(a) individual skills, knowledge and expertise to carry out their functions effectively;	(a) individual skills, knowledge and expertise to carry out their functions effectively;		
(b) good reputation, honesty and integrity.	(b) good reputation, honesty and integrity.		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	Such assessment shall be performed prior to taking up of activities by the employee or person in a comparable position, including agents and distributors, and shall be regularly repeated. The intensity of the subsequent assessments shall be determined on the basis of the tasks entrusted to the person and risks associated with ~~them~~ function they perform.	For the sake of consistency agents and distributors have been added.	BE: (Comments): NBB: We are not so convinced it is necessary to go so far and we would favor a more flexible approach: in our opinion, the modalities of the assessment (i.e. frequency and intensity), as for the training previously given to employees, can be adapted to the organization of the obliged entity and take into account its nature and its size, as well as the risks it is exposed to, besides of the risks linked to the tasks performed by the employee itself. For example, depending in the situation, such assessment could be performed short-term after entry into service and not always before. → we suggest revising the text as following: « <u>The modalities of</u> Such assessment ~~shall be performed prior to taking up of activities by the employee or person in a comparable position, and shall be regularly repeated. The intensity and~~ of the subsequent assessments shall be determined on the basis of <u>the risks of money laundering and of terrorist financing to which the obliged entity is exposed, as well as on the basis of</u> the tasks entrusted on to the person and <u>the</u> risks associated with them.' » ES: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			ok
2. Employees entrusted with tasks related to the obliged entity's compliance with this Regulation shall inform the compliance officer of any close private or professional relationship established with the obliged entity's customers or prospective customers and shall be prevented from undertaking any tasks related to the obliged entity's compliance in relation to those customers.	2. Employees, or persons in a comparable position, including agents and distributors , entrusted with tasks related to the obliged entity's compliance with this Regulation shall inform the compliance officer of any close private or professional relationship established with the obliged entity's customers or prospective customers and shall be prevented from undertaking any tasks related to the obliged entity's compliance in relation to those customers.	For the sake of consistency agents and distributors have been added.	NL: (Comments): 2. Employees, or persons in a comparable position, including agents and distributors , entrusted with tasks related to the obliged entity's compliance with this Regulation shall inform the AML compliance officer of any close private or professional relationship established with the obliged entity's customers or prospective customers and shall be prevented from undertaking any tasks related to the obliged entity's compliance in relation to those customers. AT: (Comments): There are lots of small obliged entities in smaller cities and towns that could have their operations restricted due to the present proposal, creating an uneven playing field. We propose a more proportionate approach: „2. Employees, or persons in a comparable position, including agents and distributors, entrusted with tasks related to the obliged entity's compliance with this Regulation shall inform the compliance officer of any close private or professional relationship established

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			with the obliged entity's customers or prospective customers and, where possible given the size of the obliged entity, shall be prevented from undertaking any tasks related to the obliged entity's compliance in relation to those customers.” BE: (Comments): NBB: we consider the scope of Article 11(2) is too broad if it targets all employees belonging to each of the three lines of defense. We are in favor of precisising the scope of the provision, <u>to narrow it</u>. Consequently, in order for this provision to be more relevant, we suggest limiting its scope <u>to employees belonging to the second line of defense</u> (i.e. AML/CFT compliance function), or employees of third parties to whom tasks belonging to the AML/CFT compliance function are outsourced. ES: (Comments): ok LV: (Comments): We suggest that the wording “compliance officer” should be preceded by the abbreviation “AML” to ensure consistency with the clarifications proposed by PRES in Article 9. DE: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Drafting suggestion: „2. Employees, or persons in a comparable position, including agents and distributors, entrusted with tasks related to the obliged entity’s compliance with this Regulation shall inform the compliance officer of any close private or professional relationship established with the obliged entity’s customers or prospective customers and, <i>where possible given the size of the entity</i>, shall be prevented from undertaking any tasks related to the obliged entity’s compliance in relation to those customers.” MT: (Comments): MT would like to reiterate its previous comments here that while MT does not object to the proposed wording, the implementation of this obligation may prove too onerous, especially for very small OEs. In addition, it is questionable to what extent this provision will be of added value if, for example, credit institutions were to exclude employees related to customers from carrying out the initial CDD required to open a bank account. It is after all to cater for these aspects that obliged entities are required to implement an internal audit function which may even consist in engaging an independent third

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			party to vet how AML/CFT policies and procedures have been applied. Moreover, MT would like the PCY to clarify (a) what is meant by “close private or professional relationship”, and (b) verify if there is the need that all tasks related to the obliged entities’ compliance are to be actually captured by this provision (i.e., are all employees at all levels to be captured by this provision?), if yes, then there should be an assessment as to the actual implication of the conflict of interest, and how it can be mitigated through the means of the actual prevention.
	3. This Article shall not apply where the obliged entity is a natural person or a legal person whose activities are		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	performed by one natural person only.		
	<i>Article 11a</i>		MT: (Comments): While MT does not object to the insertion of Article 11a, MT notes that this article still seems to fall short of what is currently provided for under article 38 of the revised 4th AMLD which extends such safeguards and protection to employees and representatives reporting either internally or to the FIU any suspicion of ML/FT. In MT's view, this proposed article and article 43(3) of the AMLD6 should therefore be extended to also cover situations as referred to in the current article 38 of the revised 4th AMLD
	Internal reporting	A title corresponding to the content of the article is added.	

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
3. Obligated entities shall have in place appropriate procedures for their employees, or persons in a comparable position, to report breaches of this Regulation internally through a specific, independent and anonymous channel, proportionate to the nature and size of the obliged entity concerned.	~~3~~ 1. Obligated entities shall have in place appropriate procedures for their managers , employees, or persons in a comparable position, including their agents and distributors , to report breaches of this Regulation, the Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 – COM/2021/422 final] , and any other legal provisions adopted for the implementation of these Regulations and any administrative act issued by any supervisor, internally to the AML	Technical amendment.	BG: (Comments): Compliance officer should report, after confirming the validity of the breach, to the compliance manager.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	compliance officer and the compliance manager, where applicable, through a specific, independent and anonymous channel, proportionate to the nature and size of the obliged entity concerned. Where the obliged entities already have in place procedures to report breaches in accordance with other Union act, those procedures may also be used to report the breaches of this Regulation and Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 – COM/2021/422		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	<i>final</i>], any other legal provisions adopted for the implementation of these Regulations and any administrative act issued by any supervisor, provided that the guarantees of this Article are respected.		
Obligated entities shall take measures to ensure that employees, managers or agents who report breaches pursuant to the first subparagraph are protected against retaliation, discrimination and any other unfair treatment.	2. Obligated entities shall take measures to ensure that ~~employees, managers or agents~~ those persons who report breaches pursuant to the first ~~sub~~ paragraph are protected against retaliation, discrimination and any other unfair treatment.	Technical amendment.	DE: (Comments): Please check coherence with whistle-blower directive.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	These measures shall also define:		
	a) specific procedures for the receipt of reports on breaches and their follow-up;		
	b) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in accordance with Regulation (EU) 2016/679;		
	c) rules that ensure that confidentiality is guaranteed in all cases in		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	relation to the person who reports the breaches committed within the obliged entity, unless disclosure is required by national law in the context of criminal investigations or subsequent judicial proceedings.		
4. This Article shall not apply to obliged entities that are sole traders.	43. This Article shall not apply where the obliged entity is a natural person or a legal person whose activities are performed by one natural person only ~~to obliged entities that are sole traders.~~		
Article 12	Article 12		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Situation of specific employees	Situation of specific employees		
Where a natural person falling within any of the categories listed in Article 3, point (3) performs professional activities as an employee of a legal person, the requirements laid down in this Section shall apply to that legal person rather than to the natural person.	Where a natural person falling within any of the categories listed in Article 3, point (3) performs professional activities as an employee of a legal person, the requirements laid down in this Section shall apply to that legal person rather than to the natural person.		
SECTION 2	SECTION 2		
Provisions applying to groups	Provisions applying to groups		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
<i>Article 13</i>	<i>Article 13</i>		
Group-wide requirements	Group-wide requirements		
1. A parent undertaking shall ensure that the requirements on internal procedures, risk assessment and staff referred to in Section 1 of this Chapter apply in all branches and subsidiaries of the group in the Member States and, for groups whose parent undertaking is established in the Union in third countries. The group-wide policies, controls and procedures shall also include data protection policies and policies,	1. A parent undertaking shall ensure that the requirements on internal procedures, risk assessment and staff referred to in Section 1 of this Chapter apply in all branches and subsidiaries of the group in the Member States and, ~~for groups whose parent undertaking is established in the Union~~ in third countries. ~~The group-wide policies, controls and procedures shall also include data protection policies and policies,~~		NL: (Comments): We are worried that article 13(1) AMLR might cause problems for parent undertakings which are not OEs. The internal policies, procedures and controls and the risk assessment are already ingrained in the group wide policy because the group wide requirements state that the parent undertaking must ensure that those internal policies, procedures and controls as well as the risk assessment apply within the group. IT: (Comments): We are in favour of the extension of the provisions laid down in articles 7-11 to parent undertakings as such. Nevertheless, we also see the opportunity to stress that such an intervention does not seem sufficient to fill all the possible regulatory gaps arising from the identification of “parent undertakings” as an autonomous category, when the parent undertaking of the group is not an obliged entity (e.g. on ground of control or sanctioning provisions.)

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
controls and procedures for sharing information within the group for AML/CFT purposes.	~~controls and procedures for sharing information within the group for AML/CFT purposes.~~ To this end, a parent undertaking shall perform a group-wide risk assessment, taking into account the risks identified by all branches and subsidiaries of the group, and use it to establish and implement group-wide policies, procedures and controls, including on data protection and on information sharing within the group for AML/CFT purposes. Obligated entities that are part of a group shall implement the		In the light of the above, we deem that it might be useful to come back to the original Commission's proposal which included the category of financial holding companies and mixed financial in the definition of "financial institution" provided for in article 2 of the Regulation; indeed, including them within such definition – when they are identified as parent undertakings of a group – would be an effective solution to ensure a more comprehensive extension of all the obligations under AMLR to each parent undertaking; this choice would also prevent the need for amending single articles of the Regulation (or the AMLD 6 and the AMLA Regulation) in order to include all parent undertakings within their scope expressly. Furthermore, it is worth recalling that such an approach would be consistent with the EU prudential framework (article 3 of CRD V as amended by the CRD 6 expressly includes within the definition of "Institution" also financial holding companies and mixed financial holding companies that have been granted approval in accordance with Article 21a of that Directive). . BE: (Comments): NBB: If they are not obliged entities, these parent undertakings will escape any supervision, and the effectiveness of this provision would likely be very low.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	aforementioned group-wide policies, procedures and controls, taking into account their specificities and risks to which they are exposed.		➔ <i>Drafting suggestion</i> (to be also reflected in the following provisions): <u>An obliged entity that is</u> a parent undertaking shall ensure that the requirements on internal procedures, risk assessment and staff referred to in Section 1 of this Chapter apply in all branches and subsidiaries of the group in the Member States and, ...' ES: (Comments): 1. In order to be aligned with the 'establishment' definition contain in AMLD6 art 2 point 8ç <i>'establishment' means a branch or any other form of establishment of an obliged entity that operates in a Member State or third country other than the country where its head office is established, or the subsidiary of a parent undertaking established in a country other than the country where that parent undertaking has been established.</i> And, being aware that establishments different from branches and subsidiaries can be part of a group, we suggest including the following mention to any other forms of establishment :

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			“1. A parent undertaking shall ensure that the requirements on internal procedures, risk assessment and staff referred to in Section 1 of this Chapter apply in all ~~branches and~~ subsidiaries, <u>branches and any other form of establishments</u> of the group in the Member States and in third countries.” 2. We believe that the parent undertaking, when performing the business wide risk assesment, should take into account information from all its establishments, whichever its nature and being them in the EU or in a third country: “To this end, a parent undertaking shall perform a group-wide risk assessment, taking into account the risks identified by all, ~~branches and~~ subsidiaries, <u>branches and other form of establishments</u> of the group, <u>located within the EU or in third countries</u>, and use it to establish and implement group-wide policies, procedures and controls, including on data protection and on information sharing within the group for AML/CFT purposes” 3. In our view, AML/CFT group-wide policies, procedures and controls should apply to those group’s entities that are obliged entities and to the agent networks. However, this shouldn’t prevent the exchange of information between

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			all group entities, whether or not they are obliged entities as it is set out this article: <i>“A parent undertaking shall ensure that the requirements on internal procedures, risk assessment and staff referred to in Section 1 of this Chapter apply in all branches and subsidiaries of the AML/CFT group in the Member States and in third countries”</i> Taking into account that we define AML/CFT group as we suggest in our comments to article 2(29): <u>‘AML/CFT group’ means a group of undertakings which consists of a parent undertaking, its subsidiaries, and the entities, which are obliged entities under article 3 of this Regulation....”</u> FI: (Comments): The requirements seem quite broad and we are unsure if this level of detail is necessary. It is important that it remains clear which obligations apply to different parts of the group and that the rules are clear. DK: (Comments): We think, that the current proposal can lead to legal uncertainty, when it comes to a stable

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			supervisory. We therefore suggest the following amendments to reinstate the obligation of financial holding companies as obliged entities and to adapt Art. 13 and Art. 14 to only apply to parent undertakings that are obliged entities. "A parent undertaking that is itself an obliged entity shall ensure that the requirements on internal procedures, risk assessment and staff referred to in Section 1 of this Chapter apply in all branches and subsidiaries of the group in the Member States and, ~~for groups whose parent undertaking is established in the Union~~ in third countries, where the branches and subsidiaries are majority-owned or controlled via other means. ~~The group-wide policies, controls and procedures shall also include data protection policies and policies, controls and procedures for sharing information within the group for AML/CFT purposes.~~ To this end, a parent undertaking shall perform a group-wide risk assessment, taking into account the risks identified by all branches and subsidiaries of the group, and use it to establish and implement group-wide policies, procedures and controls, including on data protection and on information sharing within the group for AML/CFT purposes. Obligated entities that are part of a group shall implement the aforementioned group-wide policies, procedures and controls, taking into account

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			their specificities and risks to which they are exposed. DE: (Comments): <u>On the term parent undertaking</u> In our view, the obligations under money laundering law are fundamentally directed only at obliged entities. It is therefore already a systematic breach if we require parent undertakings that are not themselves obliged to comply with group-wide obligations. If we now choose to require parent companies to comply with additional requirements as well, this systematic break becomes ever larger. Under the current proposal, parent undertakings would also have to comply with the obligations under Articles 7 and 8 AMLR and Articles 9 to 11 AMLR in addition to the group-wide obligations. In this way, we are effectively making these parent companies obliged entities under money laundering law by extending one of the three elementary sets of obligations (internal controls and procedures in addition to due diligence and the obligation to submit suspicious activity reports) to companies that are not themselves obliged. From our point of view, it therefore seems more consistent to list the "classic" parent undertakings themselves as obliged entities under money laundering law, meaning here financial and insurance holding companies. These holding companies would then

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			accordingly only fulfil the obligations that can be applied to them (for example, if holding companies do not have any customers, then they will not have to perform due diligence). The advantage of having these "classic" parent undertakings themselves listed as obliged entities would also be beneficial with a view to supervising these entities. Due to the structure of the money laundering law, supervision is currently only carried out on those subject to money laundering obligations and not on parent companies that are not obliged entities. With the proposal presented now, we would only impose obligations on parent companies without ensuring supervision or sanctioning. According to the requirements of the Money Laundering Directive, supervision is only carried out over obliged entities; likewise, member states only have to provide for sanctions for obliged entities. We would therefore have to adapt the entire money laundering law so that all provisions on supervision and sanctions, and possibly on other areas, apply not only to obliged entities but also to parent undertakings. In order to reach a more consistent approach, it would be much preferable to include financial and insurance holding companies in the list of obliged entities. In the absence of such holding structures, we should address group wide

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			requirements only to parent undertakings that are obliged entities at the same time. In addition, the personal scope of Art. 13 AMLR seems excessively wide as it would apply to parent undertakings irrespective of whether any OE is part of the group. Group-wide AML/CTF-requirements should only apply, if at least two entities within a group are OEs. <u>On the scope of group-wide requirements</u> It should be clarified that a parent undertaking is not only responsible for establishing group-wide PCP, but also for actually carrying out the group-wide risk-assessment, which is the basis and necessary precondition for developing any risk-adequate group-wide PCP. Beside the legal responsibility of the parent undertaking, the independent legal responsibility of each and every (subsidiary) group undertaking to implement the group-wide PCP should remain on the lawbook, as it is the basis for supervisory measures addressed to the subsidiary undertaking. This plays a particular role in cases where the parent undertaking and subsidiary undertaking are located in different jurisdictions. We agree with the general notion of the proposal that a parent undertaking can only enforce compliance with group-wide requirements vis à vis subsidiaries and branches that are majority

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			owned or the parent undertaking can otherwise exercise controlling influence. This applies in particular to the actions to be taken by the parent undertaking when subsidiaries are located in a third country (such as breaking off the business relationship) where the level of money laundering prevention is lower than in the EU. In this context, we explicitly support the current wording of Art. 14 para 2. which covers the case that the law of a third country does not allow compliance with group-wide policies. <u>On the definition of group:</u> We should not limit the understanding of group in the definition itself but only introduce the idea of majority-owned/other means of control in Art. 13 and Art. 14 AMLR. This way forward would be in line with the current Directive that has a wide understanding of the term “group” and then introduces the majority-owned requirement only when it comes to group-wide requirements in Art. 45 of the Directive. Otherwise, we run the risk of limiting e.g. our possibilities to exchange information within the group when we limit the definition of group itself. <u>Drafting suggestion:</u> 1. A parent undertaking that is itself an obliged entity shall ensure that the requirements on internal procedures, risk assessment and staff

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			referred to in Section 1 of this Chapter apply in all branches and subsidiaries of the group in the Member States and, ~~for groups whose parent undertaking is established in the Union in third countries, where the branches and subsidiaries are majority-owned or controlled via other means.~~ The group-wide policies, controls and procedures shall also include data protection policies and policies, controls and procedures for sharing information within the group for AML/CFT purposes. To this end, a parent undertaking shall perform a group-wide risk assessment, taking into account the risks identified by all branches and subsidiaries of the group, and use it to establish and implement group-wide policies, procedures and controls, including on data protection and on information sharing within the group for AML/CFT purposes. Obligated entities that are part of a group shall implement the aforementioned group-wide policies, procedures and controls, taking into account their specificities and risks to which they are exposed. MT: (Comments): MT does have certain reservations on the practical side behind the implementation of this

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			article as redrafted in practice. While parent undertakings can and should have an overseeing function, when it comes to the individual application of such obligations, MT cannot envisage how such can be appropriately carried out and attained by the parent undertaking. As a result, MT would be in favour of having the parent undertaking responsible for the overseeing of the correct and appropriate implementation of the entities' obligations at individual level emanating from articles 9 to 11 AMLR, but not of vesting such obligations directly on the parent undertaking.
	Article 7 (1), (2) and Article 8 (2) and (3) shall apply to parent undertakings taking account of the risks, the activities and size of the		DK: (Comments): ~~Article 7 (1), (2) and Article 8 (2) and (3) shall apply to parent undertakings~~ Taking account of the risks, the activities and size of the group, with regards to the establishment and implementation of group-wide policies, procedures and controls and the performance of the group-wide risk assessment the Articles

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	group, with the exception of the last sub-paragraph of Article 7(1). For the application of Article 7(1) (c) and (e), parent undertakings take into account the information published by the authorities of the Member States where their branches and subsidiaries are established.		7 and 8 shall apply accordingly. the exception of the last sub-paragraph of Article 7(1). For the application of Article 7(1) (c) and (e), parent undertakings take into account the information published by the authorities of the Member States where their branches and subsidiaries are established. DE: (Comments): <u>Drafting suggestion:</u> Article 7 (1), (2) and Article 8 (2) and (3) shall apply to parent undertakings taking account of the risks, the activities and size of the group, with the exception of the last sub-paragraph of Article 7(1). With regards to the establishment and implementation of group-wide policies, procedures and controls and the performance of the group-wide risk assessment Articles 7 and 8 shall apply accordingly. For the application of Article 7(1) (c) and (e), parent undertakings take into account the information published by the authorities of the Member States where their branches and subsidiaries are established.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	Parent undertakings shall appoint a compliance manager, responsible for overseeing group- wide policies, controls and procedures, under the conditions set out in Article 9(1) and (2). In addition, they shall appoint an AML compliance officer, under the conditions set out in Article 9(3), responsible for the day-to-day operation of the group's AML/CFT policies, procedures and controls. Article 9(4) also applies to parent undertakings.		DK: (Comments): Parent undertakings that are themselves obliged entities shall appoint a compliance manager, responsible for overseeing group- wide policies, controls and procedures, under the conditions set out in Article 9(1) and (2). In addition, they shall appoint an AML compliance officer, under the conditions set out in Article 9(3), responsible for the day-to-day operation of the group's AML/CFT policies, procedures and controls. Article 9(4) also applies to parent undertakings. DE: (Comments): <u>Drafting suggestion:</u> Parent undertakings that are themselves obliged entities shall appoint a compliance manager, responsible for overseeing group- wide policies, controls and procedures, under the conditions set out in Article 9(1) and (2). In addition, they shall appoint an AML compliance officer, under the conditions set out in Article 9(3), responsible for the day-to-

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			day operation of the group's AML/CFT policies, procedures and controls. Article 9(4) also applies to parent undertakings.
	The compliance manager of the parent undertaking shall regularly report on the implementation of the group's policies, procedures and controls to the management body of the parent undertaking. In particular, the compliance manager shall submit once a year an AML-CFT report, under the conditions set out in Article 9(5). The compliance manager appointed by the parent undertaking shall		DK: (Comments): The compliance manager of the obliged parent undertaking shall regularly report on the implementation of the group's policies, procedures and controls to the management body of the parent undertaking. In particular, the compliance manager shall submit once a year an AML-CFT report, under the conditions set out in Article 9(5). The compliance manager appointed by the parent undertaking shall take the necessary actions to remedy any deficiencies identified in a timely manner. DE: (Comments): <u>Drafting suggestion:</u> The compliance manager of the obliged parent undertaking shall regularly report on the implementation of the group's policies, procedures and controls to the management

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	take the necessary actions to remedy any deficiencies identified in a timely manner.		body of the parent undertaking. In particular, the compliance manager shall submit once a year an AML-CFT report, under the conditions set out in Article 9(5). The compliance manager appointed by the obliged parent undertaking shall take the necessary actions to remedy any deficiencies identified in a timely manner.
	Parent undertaking shall also apply Article 10.		IT: (Comments): As underlined above, we support the idea to apply all provisions laid down in articles 7-11 to parent undertakings. We note that the article 10 is already included in the Section 1 mentioned in the paragraph 1 of art. 13. BE: (Comments): NBB: what about Art. 11 (Integrity)? DK: (Comments): Parent undertaking that are themselves obliged entities shall also apply Article 10 with regards to the group. DE:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			(Comments): <u>Drafting suggestion:</u> Parent undertakings that are themselves obliged entities shall also apply Article 10 with regards to the group.
2. The policies, controls and procedures pertaining to the sharing of information referred to in paragraph 1 shall require obliged entities within the group to exchange information when such sharing is relevant for preventing money laundering and terrorist financing. The sharing of information within the group shall cover in particular the identity and characteristics of the customer, its beneficial	2. The policies, ~~controls~~ and controls and procedures and controls pertaining to the sharing of information referred to in paragraph 1 shall require obliged entities within the group to exchange information when such sharing is relevant for the purposes of customer due diligence and money laundering and terrorist financing risk management ~~preventing money laundering and terrorist financing~~ . The		ES: (Comments): In our experience, it is paramount that parent undertakings achieve a comprehensive/holistic view of customers that are common to several subsidiaries, branches and any other form of establishment of the group. To this end, information of the customer's positions within the group should be shared among its members: “...The sharing of information within the group shall cover in particular the identity and characteristics of the customer, its beneficial owners or the person on behalf of whom the customer acts, <u>all the customer's positions within the group</u>, the nature and purpose of the business relationship and of the transactions, as well as, where applicable, the analysis of the atypical transactions and the suspicions that funds are the proceeds of criminal activity or are related to terrorist financing reported to FIU pursuant to Article 50, unless otherwise instructed by the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
owners or the person on behalf of whom the customer acts, the nature and purpose of the business relationship and the suspicions that funds are the proceeds of criminal activity or are related to terrorist financing reported to FIU pursuant to Article 50, unless otherwise instructed by the FIU.	sharing of information within the group shall cover in particular the identity and characteristics of the customer, its beneficial owners or the person on behalf of whom the customer acts, the nature and purpose of the business relationship and of the transactions, as well as, where applicable, the analysis of the atypical transactions and the suspicions that funds are the proceeds of criminal activity or are related to terrorist financing reported to FIU pursuant to Article 50, unless otherwise instructed by the FIU.		FIU. This sharing of information shall allow parent undertaking to achieve a comprehensive view for customers that are common to several subsidiaries, branches and any other form of establishment of the group DK: (Comments): 2. The policies, ~~controls and~~ procedures and controls pertaining to the sharing of information referred to in paragraph 1 shall require obliged entities within the group to exchange information when such sharing is ~~relevant~~ in accordance with applicable data protection requirements, in particular Regulation (EU) 2016/679 and necessary for the purposes of customer due diligence and money laundering and terrorist financing risk management preventing money laundering and terrorist financing. The sharing of information within the group shall cover in particular the identity and characteristics of the customer, its beneficial owners or the person on behalf of whom the customer acts, the nature and purpose of the business relationship and of the transactions, as well as, where applicable, the analysis of the atypical transactions and the suspicions that funds are the proceeds of criminal activity or are related to terrorist financing reported to FIU pursuant to Article 50, unless otherwise instructed by the FIU.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			DE: (Comments): GER welcomes this proposal. Effective data sharing is key to AML/CTF and should also comprise any knowledge an OE might have obtained on the ownership and control structure of the customer (cf. Art. 16 section 1 b). However, internal policies do not serve as a legal basis for the processing of personal data. Against this background, we ask to add: “<u>in accordance with applicable data protection requirements, in particular Regulation (EU) 2016/679 and necessary...</u>”. We would prefer “necessary” instead of “relevant” in order to stick to the established data protection terminology. <u>Drafting suggestion:</u> 2. The policies, ~~controls and~~ procedures <u>and controls</u> pertaining to the sharing of information referred to in paragraph 1 shall require obliged entities within the group to exchange information when such sharing is <u>in accordance with applicable data protection requirements, in particular Regulation (EU) 2016/679 and necessary</u> ~~relevant~~ for <u>the purposes of customer due diligence and money laundering and terrorist financing risk management preventing money laundering and terrorist financing</u>. The sharing of

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			information within the group shall cover in particular the identity and characteristics of the customer, its beneficial owners or the person on behalf of whom the customer acts, the nature and purpose of the business relationship and of the transactions, as well as, where applicable, the analysis of the atypical transactions and the suspicions that funds are the proceeds of criminal activity or are related to terrorist financing reported to FIU pursuant to Article 50, unless otherwise instructed by the FIU. MT: (Comments): MT still feels that an additional paragraph is required to clearly and explicitly prohibit obliged entities from disclosing information or conveying information to non-obliged entities, especially when this concerns confidential information such as STRs and when receiving requests for information from FIUs.
	The group-wide policies, procedures and controls shall not prevent entities		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	within a group which are not obliged entities according to Article 3 of this Regulation to provide information to obliged entities within the same group in particular where such sharing is relevant for those obliged entities to comply with requirements set out in this Regulation.		
Groups shall put in place group-wide policies, controls and procedures to ensure that the information exchanged pursuant to the first subparagraph is subject to sufficient guarantees in terms of confidentiality, data	~~Groups~~ A parent undertaking shall put in place group-wide policies, controls and procedures to ensure that the information exchanged pursuant to the first and second subparagraph is subject to		DK: (Comments): An obliged parent undertaking shall put in place group-wide policies, controls and procedures to ensure that the information exchanged pursuant to the first and second subparagraph is subject to sufficient guarantees in terms of confidentiality, data protection and use of the information, including to prevent its disclosure. DE: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
protection and use of the information, including to prevent its disclosure.	sufficient guarantees in terms of confidentiality, data protection and use of the information, including to prevent its disclosure.		An explicit legal duty for group undertakings should be stated in order to justify the infringement of the data protection rights of customers (cf. Art. 6 Regulation (EU) 2016/679). <u>Drafting suggestion:</u> Groups An obliged parent undertaking shall put in place group-wide policies, controls and procedures to ensure that the information exchanged pursuant to the first and second subparagraph is subject to sufficient guarantees in terms of confidentiality, data protection and use of the information, including to prevent its disclosure.
	2a. Within a group, the parent undertaking as defined in Article 2 of this Regulation may outsource the requirements set out in Articles 13 and 14 of this Regulation to a parent	Technical amendment.	HR: (Comments): HR We also caution that a reference to a mutatis mutandis application of paragraph 2.a for groups under unified management would be necessary. “2 a. (...) <i>The first and second subparagraphs shall also apply mutatis mutandis to groups which are subject to prudential supervision on a</i>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	undertaking at the level of a sub-group. In that case, the provisions set out in Article 40 apply and in particular, the parent undertaking shall remain fully liable of the implementation of requirements that are outsourced. When justified with regard to the risks, size and ~~organization~~ organisation of the group, the supervisor, in charge of the supervision of the compliance of the parent undertaking of a group with group-wide requirements, may impose		<i>consolidated basis that consist of undertakings linked to each other by a relationship within the meaning of Article 22 paragraph 7. of Directive 2013/34/EU.”</i> NL: (Comments): We believe that there should be a possibility to appoint an entity which is not at the highest level of consolidation as parent entity. However, we have some <u>doubts about the application of outsourcing rules</u> because that would mean that there will always be an “ultimate” parent undertaking which bears final responsibility. This is undesirable as this can cause confusion about what supervisor is responsible. Parent undertakings are being given more obligations but are not considered OEs (see also the deletion of holdings from the definition of “financial institution”). No supervisor is given the power to supervise parent undertakings. Even though we agree that there should be a possibility for supervisor to appoint a group entity which is not at the highest level of consolidation as the parent undertaking, we do not agree with the application of outsourcing rules in such cases. Applying the outsourcing rules causes confusion about what entity is responsible for what and what supervisor is responsible for the supervision. Currently we see no powers for the supervisors to act in accordance with the proposed article 13(2a), second paragraph. Such a power should be included in article 34 AMLD6 etc. Inspiration could be drawn

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	on this parent undertaking to assign the implementation of the requirements set out in Articles 13 and 14 of this Regulation to a parent undertaking at the level of a sub-group. In that case, the latter acts under the control of the parent undertaking as defined in Article 2 of this Regulation, which remains fully responsible for the obligations entrusted to the parent undertaking of the sub-group.		from directive 2002/87/EC on financial conglomerates. <u>2a. Within a group, the parent undertaking as defined in Article 2 of this Regulation may outsource the requirements set out in Articles 13 and 14 of this Regulation to a parent undertaking at the level of a sub-group. In that case, the provisions set out in Article 40 apply and in particular, the parent undertaking shall remain fully liable of the implementation of requirements that are outsourced.</u> <u>When justified with regard to the risks, size and ~~organization~~ organisation of the group, the supervisor, in charge of the supervision of the compliance of the parent undertaking of a group with group-wide requirements, may decide to appoint another entity within that group as the impose on this parent undertaking, pursuant to paragraph 2a. to assign the implementation of the requirements set out in Articles 13 and 14 of this Regulation to a parent undertaking at the level of a sub-group, in the same conditions set out in the previous paragraph. In that case, the latter acts under the control of the parent undertaking as defined in Article 2 of this Regulation, which remains fully responsible for the obligations entrusted to the parent undertaking of the sub-group.</u> IT: (Comments): We disagree with the proposal to grant that institutions have the faculty to decide to outsource the requirements set out in Articles 13 and 14 of AML Regulation to a parent undertaking at the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			level of a sub-group, or that supervisors would have the power to decide so. Indeed, as we previously underlined, in order to ensure a comprehensive application of group wide policies, the AML group provisions should be applied at the highest level of prudential consolidation within the EU – for banking groups under the CRD/CRR – or at the highest level of accounting consolidation. The parent undertaking at the highest level of consolidation shall be fully responsible for the implementation of group’s policies, without the possibility to delegate this role to a subsidiary or to the supervisor’s decision. The level of application of group governance AML requirements should always distinguish between national and European level of consolidation (e.g. as provided under CRD/CRR). For each level, a group supervisor should be appointed. ES: (Comments): Reference to article 40 should be switch by article 6a (where outsourcing is now regulated): <i>“In that case, the provisions set out in Article 40 <u>6a</u> apply”</i> DK: (Comments): This part should be deleted. DE:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			(Comments): We do not support the possibility to outsource group-wide requirements to the level of a sub-group. If we spread the responsibility over several shoulders, we could run the risk of responsibility diffusion and not all information coming together at one point to ensure a holistic overview of compliance with group obligations across the group. Especially in constellations where there are several sub-groups, we see the described risk of a lack of overview. In any case, the parent undertaking at the highest consolidated level in the EU must always have the obligation to ensure compliance with group-wide policies. <u>We are in favour of deleting para. 2a.</u> LT: (Comments): The scope of supervision should be defined. MT: (Comments): MT's point of concern here relates to how are parent undertakings to check and verify that the parent undertaking of the sub-group, i.e., that

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			which has been delegated with outsourcing, is essentially fulfilling its obligations or otherwise?
	2b. By [2 years from the entry into force of this Regulation], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify the criteria under which the supervisor may impose on a parent undertaking to assign the implementation of its group-wide requirements to another parent undertaking at the level of		NL: (Comments): <u>2b. By [2 years from the entry into force of this Regulation], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify the criteria under which the supervisor may decide to appoint an entity as the impose on a parent undertaking to assign the implementation of its group-wide requirements to another parent undertaking at the level of a subgroup, pursuant to paragraph 2 a.</u> BE: (Comments): NBB: we are very concerned by the increasing number of Level 2 texts (RTS) that the AMLA will be mandated to develop within a short period of time : we fear that the task will not be sustainable for the new Authority and/or that the AMLA will not be able, due to the pressure of time, to meet highest standards when developing these numerous and important Level 2 texts. We consider it would be very necessary to make an overall assessment of the feasibility of the mandate that provided to the AML, taking into account all the level 2 texts that are foreseen in the amended AMLR and AMLAR.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	a subgroup, pursuant to paragraph 2 a.		FI: (Comments): On a general note, AMLA is required to develop a lot of regulatory technical standards in a quite short amount of time and we are a bit worried about the workload this means. DK: (Comments): This part should be deleted. DE: (Comments): See comment above.
	2c. The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in paragraph 2b of this Article in accordance with Articles 38 to 41 of Regulation [please insert reference –		DK: (Comments): This part should be deleted.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].		
3. By [2 years from the entry into force of this Regulation], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify the minimum requirements of group-wide policies, including minimum standards for information sharing within the group, the role and responsibilities of	3. By [2 years from the entry into force of this Regulation], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify the minimum requirements of group-wide policies, including minimum standards for information sharing within the group, the role and responsibilities of		DK: (Comments): DK: As previously noted, we are worried about the second sentence of this sub article in regard to the “structures” that could be included in this provision. If an entity falls within the scope of the definition of a group it should clearly be included, but the wording suggests widening the scope of group definition, which might have unintended consequences if structures are included in a group definition without proper merit, i.e., where the way the business is conducted doesn’t give reason to e.g. common policies, controls, etc.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
parent undertakings that are not themselves obliged entities with respect to ensuring group-wide compliance with AML/CFT requirements and the conditions under which the provisions of this Article apply to entities that are part of structures which share common ownership, management or compliance control, including networks or partnerships.	parent undertakings that are not themselves obliged entities with respect to ensuring group-wide compliance with AML/CFT requirements and the conditions under which the provisions of this Article apply to entities that are part of structures which share common ownership, management or compliance control, including networks or partnerships.		
4. The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in	4. The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
paragraph 3 of this Article in accordance with Articles 38 to 41 of Regulation <i>[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]</i> .	paragraph 3 of this Article in accordance with Articles 38 to 41 of Regulation <i>[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]</i> .		
Article 14	Article 14		
Branches and subsidiaries in third countries	Branches and subsidiaries in third countries		
1. Where branches or subsidiaries of obliged entities are located in third countries where the minimum AML/CFT requirements are less strict than those set out in this	1. Where branches or subsidiaries of obliged entities are located in third countries where the minimum AML/CFT requirements are less strict than those set out in this		NL: (Comments): Please take into account that not all parent undertakings are OEs. This could cause issues with supervision. BE: (Comments): NBB: Is it appropriate that, within a group, only the “parent undertaking” at the top of the group has this responsibility, not the obliged entity within the group that directly has the branch or subsidiary at stake?

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Regulation, the obliged entity concerned shall ensure that those branches or subsidiaries comply with the requirements laid down in this Regulation, including requirements concerning data protection, or equivalent.	Regulation, the ~~obliged entity concerned~~ parent undertaking shall ensure that those branches or subsidiaries comply with the requirements laid down in this Regulation, including requirements concerning data protection, or equivalent.		→ We suggest to provide : “<u>the parent undertaking and the obliged entity that directly holds those branches or subsidiaries</u> shall ensure...”? Otherwise the risk exists that these obliged entities open such branches or create/acquire such subsidiaries without scrutinizing the AML/CFT rules applicable in the third country, just because they are not directly responsible for this. DK: (Comments): 1. Where branches or subsidiaries of obliged entities are located in third countries where the minimum AML/CFT requirements are less strict than those set out in this Regulation, the ~~obliged entity concerned~~ obliged parent undertaking shall ensure that those branches or subsidiaries comply with the requirements laid down in this Regulation, including requirements concerning data protection, or equivalent. DE: (Comments): See previous comments on Art. 13 AMLR. <u>Drafting suggestion:</u> 1. Where branches or subsidiaries of obliged entities are located in third countries

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			where the minimum AML/CFT requirements are less strict than those set out in this Regulation, the ~~obliged entity concerned~~ obliged parent undertaking shall ensure that those branches or subsidiaries comply with the requirements laid down in this Regulation, including requirements concerning data protection, or equivalent.
2. Where the law of a third country does not permit compliance with the requirements laid down in this Regulation, obliged entities shall take additional measures to ensure that branches and subsidiaries in that third country effectively handle the risk of money laundering or terrorist financing, and the head	2. Where the law of a third country does not permit compliance with the requirements laid down in this Regulation, ~~obliged entities~~ the parent undertaking shall take additional measures to ensure that branches and subsidiaries in that third country effectively handle the risk of money laundering		NL: (Comments): In article 14(2) AMLR reference is made to the home member state of parent undertakings. It is however unclear what is meant here as the definition of "home member state" in article 2(3) AMLD6 applies to OEs while parent undertakings are not necessarily OEs. 2. Where the law of a third country does not permit compliance with the requirements laid down in this Regulation, ~~obliged entities~~ the parent undertaking shall take additional measures to ensure that branches and subsidiaries in that third country effectively handle the risk of money laundering or terrorist financing, and ~~the head office~~ their shall inform the supervisors of ~~their~~ its home Member State of those additional measures . Where the supervisors of the home Member State consider that the additional measures are not sufficient, they shall exercise additional supervisory actions, including requiring the group not to establish any business

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
office shall inform the supervisors of their home Member State. Where the supervisors of the home Member State consider that the additional measures are not sufficient, they shall exercise additional supervisory actions, including requiring the group not to establish any business relationship, to terminate existing ones or not to undertake transactions, or to close down its operations in the third country.	or terrorist financing, and ~~the head-office~~ shall inform the supervisors of ~~their~~ its home Member State. Where the supervisors of the home Member State consider that the additional measures are not sufficient, they shall exercise additional supervisory actions, including requiring the group not to establish any business relationship, to terminate existing ones or not to undertake transactions, or to close down its operations in the third country.		relationship, to terminate existing ones or not to undertake transactions, or to close down its operations in the third country. BE: (Comments): NBB: Idem : “<u>the parent undertaking and the obliged entity that directly holds branches or subsidiaries in that third country...</u>” FR: (Comments): Such information could be useful to FIUs as well, as it can give them an idea of what information they can obtain through international cooperation. See proposal below. <i>2. Where the law of a third country does not permit compliance with the requirements laid down in this Regulation, ~~obliged entities~~ the parent undertaking shall take additional measures to ensure that branches and subsidiaries in that third country effectively handle the risk of money laundering or terrorist financing, and ~~the head-office~~ shall inform the supervisors and FIU of ~~their~~ its home Member State. Where the supervisors of the home</i>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<i>Member State consider that the additional measures are not sufficient, they shall exercise additional supervisory actions, including requiring the group not to establish any business relationship, to terminate existing ones or not to undertake transactions, or to close down its operations in the third country.</i> DK: (Comments): 2. Where the law of a third country does not permit compliance with the requirements laid down in this Regulation, ~~obliged entities~~ the obliged parent undertaking shall take additional measures to ensure that branches and subsidiaries in that third country effectively handle the risk of money laundering or terrorist financing, and ~~the head office~~ shall inform the supervisors of ~~their~~ its home Member State. Where the supervisors of the home Member State consider that the additional measures are not sufficient, they shall exercise additional supervisory actions, including requiring the group not to establish any business relationship, to terminate existing ones or not to undertake transactions, or to close down its operations in the third country. DE: (Comments): See previous comments on Art. 13 AMLR.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<u>Drafting suggestion:</u> 2. Where the law of a third country does not permit compliance with the requirements laid down in this Regulation, ~~obliged entities~~ the obliged parent undertaking shall take additional measures to ensure that branches and subsidiaries in that third country effectively handle the risk of money laundering or terrorist financing, and ~~the head office~~ shall inform the supervisors of ~~their~~ its home Member State. Where the supervisors of the home Member State consider that the additional measures are not sufficient, they shall exercise additional supervisory actions, including requiring the group not to establish any business relationship, to terminate existing ones or not to undertake transactions, or to close down its operations in the third country.
3. By [2 years after the date of entry into force of	3. By [2 years after the date of entry into force of		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
<i>this Regulation</i>], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify the type of additional measures referred to in paragraph 2, including the minimum action to be taken by obliged entities where the law of a third country does not permit the implementation of the measures required under Article 13 and the additional supervisory actions required in such cases.	<i>this Regulation</i>], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify the type of additional measures referred to in paragraph 2, including the minimum action to be taken by obliged entities where the law of a third country does not permit the implementation of the measures required under Article 13 and the additional supervisory actions required in such cases.		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
4. The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in paragraph 3 of this Article in accordance with Articles 38 to 41 of Regulation <i>[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]</i> .	4. The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in paragraph 3 of this Article in accordance with Articles 38 to 41 of Regulation <i>[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]</i> .		
CHAPTER III	CHAPTER III		
CUSTOMER DUE DILIGENCE	CUSTOMER DUE DILIGENCE		NL: (Comments): The current Member State option regarding e-money as stipulated in article 12 of the current AMLD does not seem to have been incorporated in the AMLR proposal or the AMLD6 proposal. This option basically means that – under certain

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			circumstances - in certain low risk e-money cases some CDD measures don't need to be applied. The Netherlands has in fact made use of this Member State option and in practice this option is mainly used by businesses offering gift cards of €50 max. Such gift cards can be used to purchase flowers, books, and other low risk goods. We do not see the necessity of deleting such an option as these are low risk cases.
SECTION 1	SECTION 1		
General provisions	General provisions		
<i>Article 15</i>	<i>Article 15</i>		
Application of customer due diligence	Application of customer due diligence		
1. Obligated entities shall apply customer due diligence	1. Obligated entities shall apply customer due diligence		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
measures in any of the following circumstances:	measures in any of the following circumstances:		
(a) when establishing a business relationship;	(a) when establishing a business relationship;		
(b) when involved in or carrying out an occasional transaction that amounts to EUR 10 000 or more, or the equivalent in national currency, whether that transaction is carried out in a single operation or through linked transactions, or a lower threshold laid down pursuant to paragraph 5;	(b) when ~~involved in or~~ carrying out an occasional transaction that amounts to EUR 10 000 or more, or the equivalent in national currency, whether that transaction is carried out in a single operation or through linked transactions, or a lower threshold laid down pursuant to paragraph 5;	To reflect answers to the questionnaire following WP 18.7.2022, where majority of MS supported option 3 [addition of special provision on obliged entities intermediating transactions – see also new Article 15(2c)].	NL: (Comments): Agreed. ES: (Comments): We are against to establish a unique threshold of 10.000 EUR for all occasional transactions In our view, and considering the ML/TF risk linked to the use of cash it is essential that the threshold for applying DD measures to occasional transactions involving cash (irrespective of the type of obliged entity) should be below EUR 10,000. In any case, the possibility of setting a lower threshold should be entrusted to the Member States and not to AMLA via RTS.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			(Lastly, we wonder whether it would not be positive, for a consistent application of the standard in all jurisdictions and by all SOs, to include in Article 3 a definition of "occasional transactions", in the same way that "business relationship" is defined there. It may not be sufficient to apply a definition by exclusion of that which is not) BG: (Comments): MS should be able to set a lower threshold, similarly to what is proposed in relation to lowering cash payment limits under Article 59 AMLR. DE: (Comments): <u>On the term “involved in”:</u> We support the proposed drafting . <u>On the term “or the equivalent in national currency”</u> The legislative package uses a new wording to designate numerical thresholds, namely “euro or the equivalent in national currency”. A national currency, in our understanding, refers to a currency recognised as an official currency. With some very minor exceptions (El Salvador), no crypto-asset has been designated as legal tender. That said, the argument could be made, that transfers in crypto-assets would remain outside

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			the scope of the new wording. The new wording also seems to exclude cases where there is no exchange of currency (for instance when gold is exchanged for crypto-assets, as happened in a recent ML case in Austria). We have to keep in mind that the AMLR will be applied by a large number of professionals, not all of whom are dedicated AML/CFT experts and some of whom might actively look for loopholes. On the basis of the proposed wording, a strong case could be made that any asset other than official national currencies is not subject to the requirements of the legislative package. We are not aware of any problem caused by the current wording of the 4th/5th AMLD (a simple reference to EUR) and we would strongly propose retaining it. <u>On the threshold of 10.000</u> Regarding trade in precious metals and stones, Germany's NRA identified that the threshold of 10 000 EUR for customer due diligence is too high and incentivises multiple transactions slightly below the threshold and that transactions are usually carried out outside a business relation. Since January 2020, German law requires a lower threshold of 2 000 EUR which has considerably restricted anonymous and risky

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			trading with precious metals. A lower threshold on EU level should be considered. (b) when ~~involved in or~~ carrying out an occasional transaction that (i) amounts to EUR 10 000 or more, or the equivalent in national currency, whether that transaction is carried out in a single operation or through linked transactions or a lower threshold laid down pursuant to paragraph 5; (ii) concerns trade in precious metals and stones and amounts to EUR 2 000 or more, or the equivalent in national currency, whether that transaction is carried out in a single operation or through linked transactions or a lower threshold laid down pursuant to paragraph 5;
(c) when there is a suspicion of money laundering or terrorist financing, regardless of any	(c) when there is a suspicion of money laundering or terrorist financing, regardless of any		DE: (Comments): “derogation” seems redundant (to the term “exemption”) Drafting suggestion:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
derogation, exemption or threshold;	derogation, exemption or threshold;		(ii) when there is a suspicion of money laundering or terrorist financing, regardless of any derogation , exemption or threshold;
(d) when there are doubts about the veracity or adequacy of previously obtained customer identification data.	(d) when there are doubts about the veracity or adequacy of previously obtained customer identification data.		DE: (Comments): Please consider whether this case should not also be addressed in Article 21 paragraph 3 as it seems one of the situations that should give rise to an extraordinary update of customer identification data. As it presupposes the previous obtainment of customer data, Art. 16 - if understood to deal with initial CDD - might not be the right place for this provision at all.
			BE: (Comments): NBB: we suggest to add a point € drafted as following: “(e) when there are reasons to doubt that the person who, as part of a business relationship, wishes to carry out a transaction is actually the customer with whom the business relationship was established or his authorised and identified agent.”

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			This additional point intends to clarify that when a obliged entity has doubts as to the fact that the person who wishes to carry out a transaction in the context of a business relationship that she has previously established, is the client that she identified when said business relationship has been established or its authorized and identified representative, it is required to apply CDD measures vis à vis this person. The previous point d) already provides for the obligation to apply CDD measures when there are doubts about the veracity or adequacy of previously obtained customer data. The hypothesis referred to in new point e) does not merge however entirely with that envisaged in point d), reason why legal certainty recommends to specifically target it.
2. In addition to the circumstances referred to in paragraph 1, credit and financial institutions and crypto-asset service providers shall apply	~~2.~~ 2a. In addition to the circumstances referred to in paragraph 1, credit and financial institutions, and with the exception of crypto-asset service	To reflect the fact that crypto asset service providers are under current compromise text included among financial institutions, and to reflect special threshold for CASPs under paragraph 2b.	BE: (Comments): <i>NBB drafting suggestion to be aligned with para 2b(a) and (b):</i> “...when initiating or executing an occasional transaction that constitutes a transfer of funds as defined in Article 3, point (9) of Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
customer due diligence when either initiating or executing an occasional transaction that constitutes a transfer of funds as defined in Article 3, point (9) of Regulation <i>[please insert reference – Regulation (EU) 2015/847 - COM/2021/422 final]</i> , or a transfer of crypto-assets as defined in Article 3, point (10) of that Regulation https://eur-lex.europa.eu/eli/dir/2015/849/2018-07-09 , exceeding EUR 1 000 or the equivalent in national currency.	providers, shall apply customer due diligence when ~~either~~ initiating or executing an occasional transaction that constitutes a transfer of funds as defined in Article 3, point (9) of Regulation <i>[please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final]</i> , ~~or a transfer of crypto-assets as defined in Article 3, point (10) of that Regulation~~ https://eur-lex.europa.eu/eli/dir/2015/849/2018-07-09 , exceeding that amounts to EUR 1 000 or more , or the equivalent in national currency.		final], ~~that amounts to~~ EUR 1 000 ~~or more~~ , or the equivalent in national currency, <u>whether that transaction is carried out in a single operation or through linked transactions.</u> ES: (Comments): The financial sector (broadly speaking) should be subject to the same rules describe above for all occasional transactions involving cash. In addition, only when a specific threshold is surpassed , which could be the proposed EUR 10 000, should the additional DD measures of Article 16(1) be required. LV: (Comments): We are in favor of 0 EUR threshold on application of due diligence measures for transfers of crypto assets. IE: (Comments): Not agreed. CASPs should not be included in the definition of financial institution and therefore should be included in this para.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	2b. By way of derogation from paragraph 1, point (b), crypto-asset service providers shall:		
	(a) apply customer due diligence measures when carrying out an occasional transaction that amounts to EUR 1 000 or more, or the equivalent in national currency, whether the transaction is carried out in a single operation or through linked transactions;	This ensures alignment with FATF Recommendations.	AT: (Comments): Due to the risks in the CASP sector that our Financial Market Authority has observed, we prefer a EUR 0 threshold for all CDD measures. FR: (Comments): France supports the triggering of all CDD measures laid out in article 16 for all occasional transactions as soon as 0€ by crypto-asset providers (option 1a). This is the only way that we can effectively tackle the practice of smurfing. In particular knowing the beneficial owner of such transactions can help avoid the practice of bogeymen whose identity is used by the actual order issuer to dissimulate their

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			identity. In addition, it will be very difficult to properly distinguish occasional transactions from business relationships for CASPs. KYC 0 euros for CASPs ensures consistency with the future TFR recast.
	(b) apply at least customer due diligence measures referred to under Article 16(1), point (a), when carrying out an occasional transaction below EUR 1 000, or the equivalent in national currency, whether the transaction is carried out in a single operation or through linked transactions.	This implements option 1b under „Threshold for CASP transactions – Article 15(2) AMLR“ part of Presidency discussion note WK 10121/2022 INIT discussed on WP 18.7.2022. The Presidency believes that this solution is within the sphere of compromise, as it is a concession to those Member States that preferred mere alignment with FATF Recommendations, but is at the same time acceptable for those MS, who	EE: (Comments): EE Comment. We would propose a following amendment (amendment is underlined): ”(b) apply at least customer due diligence measures referred to under Article 16(1), point (a) <u>and use technical solutions for real time monitoring of the transactions and risk analysis</u>, when carrying out an occasional transaction below EUR 1 000, or the equivalent in national currency, whether the transaction is carried out in a single operation or through linked transactions.”. As we understand the article 15 section 2b point (b) makes it compulsory for the CASP to identify the person making the occasional transaction. The collection of data is necessary for the travel rule, but the package does not foresee any kind of analysis of the data by the CASP, when the transactions are below 1000 (in neither end of the transaction). It is questionable how can CASP understand the linkages of the transactions or have reasonable grounds for

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
		wished to have stricter 0 EUR threshold triggering all CDD measures.	suspecting money laundering or terrorist financing (TFR art 16 para 3 (b)) without any kind of analysis of the data received. The position of Estonia is that the data should be collected about all the crypto transactions as the automatisisation and structuring of transactions can be easier in crypto compared to the traditional finance environment. In addition there should be a minimal analysis of the data. Otherwise there would be no justification of the collection and storage of the data. It can be automated and it can be a comparative analysis data to identify whether or not the service provider has any information that hints to higher risk or are there any discrepancies in data. This can be done with automated comparisons with the data collected in the past, against sanctions lists, against list of high risk jurisdictions, against list of PEPs if available and other lists. That is why we would like to see that the obligation of real time monitoring and risk analysis is obligatory in respect of each transaction. Please also see the explanation under art 15 section 2b (a). In addition we would like to point out that the part of the sentence “whether the transaction is carried out in a single operation or through linked transactions” in this context is not necessary because the service provider is only looking for lincages to apply stronger measures.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			If with the lincages the transaction is above 1000 then the general rule will apply. This point will apply only in all other circumstances. IE: (Comments): Not agreed. The threshold of €1,000 should apply to all CASP transactions. DE: (Comments): The proposed wording is consistent with the TFR. LT: (Comments): We maintain our position and we would prefer to have a 0 EUR threshold triggering all CDD measures for crypto asset service providers. Regarding CASPs, there can be risky transactions even below a 1000 EUR threshold and such provision could incentivise transactions below threshold to circumvent it.
	2c. Obligated entities whose business activity consists in intermediating transactions between their	To reflect answers to the questionnaire following WP 18.7.2022, where majority of MS supported option 3 [addition of	NL: (Comments): 2c. Obligated entities whose business activity consists in intermediating transactions between their customers and their counterparts, or whose business activity consists in otherwise facilitating

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	customers and their counterparts, or whose business activity consists in otherwise facilitating transactions by matching two counterparts, shall also apply customer due diligence measures with regard to that counterparts, where the transaction meets the criteria of paragraph 1 (b), or the criteria of paragraph 2a or 2b.	special provision on obliged entities intermediating transactions and deletion of words “involved in” in Article 15(1)(b)].	transactions by matching ~~two~~ counterparts, shall also apply customer due diligence measures with regard to ~~that~~ those counterparts, where the transaction meets the criteria of paragraph 1 (b), or the criteria of paragraph 2a or 2b. IT: (Comments): We share the need to address the case of OEs not directly carrying out occasional transactions in a separate paragraph. Nonetheless, we would like the wording to be even more precise. The rationale behind this rule might possibly explained in an additional recital. BE: (Comments): NBB: As already underlined earlier and above, in principle, AMLR should apply to obliged entities only “in so far they act in the exercise of their professional regulated activities”. Unless the “intermediation of transactions” of the “facilitation of transactions by matching two counterparts” is considered as a regulated activity, this Article 15 (2c) should be redrafted or clarified. In any cases, the “intermediation” at stake should be defined. DE: (Comments): We support this drafting.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	2.d By way of derogation from paragraph 1(b), obliged entities shall apply customer due diligence when they set up a legal person or a legal arrangement, irrespective of the threshold of the transaction.	To reflect issue raised by MS which opposed the fiction of business relationship in case of forming companies or trusts, given the fact that ongoing monitoring of the transaction is not possible if there is no long term duration, as is the case with occasional transaction.	BE: (Comments): NBB: Article 15 (2)d should be clarified -> we suggest to specify that “By way of derogation from paragraph 1(b), <u>when carrying out an occasional transaction in the context of the set up of a legal person or a legal arrangement</u> , obliged entities shall apply customer due diligence ~~when they set up a legal person or a legal arrangement~~ , irrespective of the threshold of the transaction”. IE: (Comments): Not agreed. The threshold of €1,000 should apply in all cases DE: (Comments): We support this drafting.
3. Providers of gambling services shall apply customer due diligence upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amounting	3. Providers of gambling services shall apply customer due diligence upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amounting		DE: (Comments): Simplification taking account of practical requirements. <u>Drafting suggestion:</u> 3. Providers of gambling services shall apply customer due diligence upon the collection of winnings, the wagering of a stake, or both,

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
to at least EUR 2 000 or the equivalent in national currency, whether the transaction is carried out in a single operation or in linked transactions.	to at least EUR 2 000 or the equivalent in national currency, whether the transaction is carried out in a single operation or in linked transactions.		when carrying out transactions amounting to at least EUR 2 000 or the equivalent in national currency, whether the transaction is carried out in a single operation or in linked transactions. The identification requirements may also be met by identifying the customer upon entry to the casino or other physical gambling premises, provided the obliged entity also ensures that each transaction of EUR 2,000 or more, including the purchase or exchange of gambling chips, can be attributed to the player in question.
4. In the case of credit institutions, the performance of customer due diligence shall also take place, under the oversight of supervisors, at the moment that the institution has been determined failing or likely	4. In the case of credit institutions, the performance of customer due diligence shall also take place, under the oversight of supervisors, at the moment that the institution has been determined failing or likely		NL: (Comments): Although we are happy to see the adjustments made to recital 38, we believe the text of article 15(4) AMLR also requires amendments. IT: (Comments): We firmly disagree with this provision which is unclear and might lead to interpretational doubts. First, the scope of the obligation is not clearly defined: is the obliged entity expected to carry out a generalized CDD on every relationships it has in place? If so, the obligation

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
to fail pursuant to Article 32(1) of Directive 2014/59/EU of the European Parliament and of the Council ¹ or when the deposits are unavailable in accordance with Article 2(1)(8) of Directive 2014/49/EU of the European Parliament and of the Council ² . Supervisors shall decide on the intensity and scope of such customer due diligence measures having regard to the specific circumstances of the credit institution.	to fail pursuant to Article 32(1) of Directive 2014/59/EU of the European Parliament and of the Council or when the deposits are unavailable in accordance with Article 2(1)(8) of Directive 2014/49/EU of the European Parliament and of the Council . Supervisors shall decide on the intensity and scope of such customer due diligence measures having regard to the specific circumstances of the credit institution.		would be extremely burdensome (not to say impracticable), especially during the launch of an insolvency proceeding; moreover, it would exceed the objective identified in recital 38, that “depositors whose funds are the proceeds of money laundering should be excluded from repayment by a deposit guarantee scheme”. In order to “prevent that illicit funds are reimbursed to such [protected] depositors”, it would be sufficient (but still not feasible as explained below) to set out that CDD should take place only with regard to relationships that will benefit from the DGS protection (incidentally, reimbursement by the DGS does not necessarily occur in any insolvency proceeding). However, if this was the intention, we still note that the provision does not properly specify which would be the legal consequences of not performing the CDD. In this regard, we recall that the DGSD excludes from the repayment by the DGS only i) deposits arising out of transactions in connection with which there has been a criminal conviction for money laundering and ii) deposits the holder of which has never been identified pursuant to Article 9(1) of Directive 2005/60/EC. Moreover, DGSD allows for the suspension of the

¹ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council Text with EEA relevance (OJ L 173, 12.6.2014, p. 190).

² Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes Text with EEA relevance (OJ L 173, 12.6.2014, p. 149).

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			repayment only in case that the depositor has been charged with an offence arising out of or in relation to money laundering. Indeed, the aim of the DGSD is ensuring that depositors are repaid within 7 days of the date on which deposits have become unavailable. In this sense, only precise circumstances (i.e., criminal conviction/charge) – and not only the mere non-performance of the CDD – could lead to a non-repayment by the DGS. Indeed, a wide non-repayment would put financial stability at risk. Finally, we would like to highlight that, in any case, there would not be enough time to perform a generalized CDD when an insolvency proceeding has been commenced (or deposits have become unavailable) since, as explained above, the DGS should repay protected deposits within seven days. For these reasons, we suggest to eliminate/remodulate such provision and to improve on-going supervision. AT: (Comments): We have two technical comments: First, the trigger for the application of CDD measures in this paragraph presumes that the determination of failing or likely to fail will lead to a payout procedure. However, there are different possibilities where a FOLTF determination will not lead to payouts, such as if a resolution using the sale of business instrument occurs. A DGS may also use alternative measures under Art.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			11(6) DGSD for a deposit book transfer. In such circumstances, no payout will occur. We thus propose a reference to a payout procedure in accordance with Art. 6(1) DGSD. Second, the CDD measures are supposed to be applied continuously. It is not entirely clear whether ML/TF prevention would be strengthened by requiring all CDD measures to be conducted at the point of failure. Furthermore, compliance staff of the failed institutions will realistically not be very engaged. We think that a simpler and more effective way would be to use the existing CDD measures of obliged entities. Any factor that could affect the eligibility of a deposit under the DGSD (such as an ML conviction) already needs to be included in the single customer view file available to the DGS. The upcoming DGSD review should contain more restrictive drafting on the eligibility of deposits (for instance extending the exclusion to deposits in relation to TF and potentially broadening the exclusion to deposits suspended by the FIU). However, this issue is not something that we can easily solve through the AMLR. We think that our drafting solution solves all these problems: “4. In the case of a payout procedure pursuant to Art. 6(1) of Directive 2014/49/EU of the European Parliament and of

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			the Council, the payout shall be made to an account in the name of the depositor at a credit or financial institution established in the European Union. Where an institution has failed due to AML/CFT breaches, obliged entities holding the accounts to which the payout is made shall take this factor into consideration and consider the application of enhanced due diligence measures.” BE: (Comments): NBB: This can be considered reasonable when there are grounds to suspect that CDD requirements were severely disregarded by the failing credit institution, but the causes of the failing will generally be of another nature. Shall then the supervisors, which are competent to “decide on the intensity and scope of such CDD measures” be entitled to fully exempt the failing credit institution from these CDD measures ? otherwise, who will concretely apply the CDD measures? (as the DGS is not an obliged entity). SE: (Comments): As we have mentioned during previous WP:s, we think that this provision will be hard to apply for DGS-authorities. Even considering that CDD-measures shall take place under the oversight of supervisors, an obligation to do CDD on the whole or large parts of the customer base while the institution is failing or likely to

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			fail seems hard to reconcile with the time limits set forth in the DGS-directive. BG: (Comments): Propose to delete “under the oversight of supervisors”, or at least add “ AMLA shall develop regulatory standards/guidelines on the oversight exercised by supervisors. ”
5. By [2 years from the date of entry into force of this Regulation], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify:	5. By [2 years from the date of entry into force of this Regulation], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify:		
(a) the obliged entities, sectors or transactions that	(a) the obliged entities, sectors or transactions that		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
are associated with higher money laundering and terrorist financing risk and which shall comply with thresholds lower than those set in paragraph 1 point (b);	are associated with higher money laundering and terrorist financing risk and which shall comply with thresholds lower than those set in paragraph 1 point (b);		
(b) the related occasional transaction thresholds;	(b) the related occasional transaction thresholds;		NL: (Comments): A Dutch court has indicated that a supervisor should always be able to identify the client in order to determine that transactions are linked. This renders supervision regarding anonymous cash transactions (which is not an unusual practice when dealing with consumers) practically impossible, since it is not possible for the supervisor to identify the client in these cases. This creates a serious loophole in the framework. Therefore, it would be beneficial for the framework if AMLA would clarify in its RTS that anonymous cash transactions can be one of the indicators for linked transactions. Moreover, since the definition of linked transactions is also relevant for the application of article 59 and anonymous cash transactions are not uncommon for traders in goods, it is necessary to clarify that

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			the criteria for linked transaction can also be used for (the enforcement of) the cash limits in article 59. <u>Text suggestion:</u> (b) the related occasional transaction thresholds considering in any case corresponding dates or amount, ascending invoice number and anonymous cash transactions. These criteria also apply to article 59 of this Regulation.
(c) the criteria to identify linked transactions.	(c) the criteria to identify linked transactions.		
			EE: (Comments): EE Comment. We propose to add the following: “(d) the list of attributes of the technical solutions used for real time monitoring of the transactions and risk analysis by the crypto asset service provider.” Please see the explanation under art 15 section 2b (a).

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
When developing the draft regulatory technical standards referred to in the first sub-paragraph, AMLA shall take due account of the following:	When developing the draft regulatory technical standards referred to in the first sub-paragraph, AMLA shall take due account of the following:		
(a) the inherent levels of risks of the business models of the different types of obliged entities;	(a) the inherent levels of risks of the business models of the different types of obliged entities;		
(b) the supra-national risk assessment developed by the Commission pursuant to Article 7 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> .	(b) the supra-national risk assessment developed by the Commission pursuant to Article 7 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> .		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
6. The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in paragraph 5 of this Article in accordance with Articles 38 to 41 of <i>[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]</i> .	6. The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in paragraph 5 of this Article in accordance with Articles 38 to 41 of <i>[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]</i> .		
Article 16	Article 16		
Customer due diligence measures	Customer due diligence measures		BE: (Comments): NBB: As far as CDD is concerned, we consider that the basic principle should be to rule - in a fully harmonized and granular way - the goals to be achieved by each CDD measure, depending on the level of risk (what means precisely

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			"identifying a customer" or "verifying the customer's identity", etc.), while the manner to achieve them should be determined at the level of obliged entities taking into account the local legal framework (through their internal policies and procedures, taking account of their own characteristics and based on their business wide risk assessment), in accordance with their individual risk assessments. Example: for the verification of the identity, in particular, there is a diversity of documents that can be considered as reliable, and that can differ from country to another (e.g. the official ID Card does not exist in all MS). Fully harmonizing the rules as regards the verification of the identity would mean making an exhaustive list of accepted verification documents, depending on the place of residence of the customer who is a natural person, or the country of establishment for legal persons. This appears to be impossible. In the same vein, fully harmonizing the monitoring of transactions should require to consider separately each possible case Consequently, we do not think that every details of the CDD to be applied on a case by case basis should (and could) be determined by harmonized

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			rules, but that it is much more essential that there is an fully harmonized and granular enough view of the goals to be reached in all cases, depending on the risk identified, when conducting each element of the CDD.
1. For the purpose of conducting customer due diligence, obliged entities shall apply all of the following measures:	1. For the purpose of conducting customer due diligence, obliged entities shall apply all of the following measures:		
(a) identify the customer and verify the customer's identity;	(a) identify the customer and verify the customer's identity;		BG: (Comments): Propose to add “...on the basis of documents, data or information obtained from a reliable and independent source”. DE: (Comments): <u>Drafting suggestion:</u> (a) identify the customer and verify the customer's identity pursuant to Article 18;
			DE: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Subparagraph 2 should be integrated into the catalogue of standard CDD- measures. (b) identify any person purporting to act on behalf of the customer and verify that person's identity pursuant to Article 18, and verify that such person is authorised to act on behalf of the customer;
(b) identify the beneficial owner(s) pursuant to Articles 42 and 43 and verify their identity so that the obliged entity is satisfied that it knows who the beneficial owner is and that it understands the ownership and control structure of the customer;	(b) identify the beneficial owner(s) pursuant to Articles 42 and 43 and take reasonable measures to verify their identity so that the obliged entity is satisfied that it knows who the beneficial owner is and that it understands the ownership and control structure of the customer;		NL: (Comments): We disagree with this amendment. IT: (Comments): We point out that making reference to BOs "pursuant to articles 42 and 43" might not be sufficient. In fact, the AMLR proposal defines the beneficial owner, in continuity with the current AMLD, not only as i) "any natural person who ultimately owns or controls a legal entity or express trust or similar legal arrangement", but also as ii) "any natural person on whose behalf or for the benefit of whom a transaction or activity is being conducted". Nevertheless, it seems to us that the current proposal does not contain any specific provision nor any mandate to the AMLA, in order to provide criteria to identify the beneficial owner in the case under ii). In particular, unlike article 13, par. 1.b) of the current AMLD, article 16,

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			par. 1.b) of the AMLR proposal only requires the identification of the beneficial owner “pursuant to article 42 and 43”, without leaving the possibility to refer such obligation also to beneficial owners other than those explicitly considered under these articles. Such an approach leaves out a number of situations which fall under the current definition of BO as set out in the FATF standards and in the current AMLD (as well as in the proposed AMLR definition). As a confirmation of this, it is worth noticing that the EBA Revised Risk factor Guidelines foresees/allows the application of CDD measures also to beneficial owners falling under the case ii) above and namely in the case of pooled accounts (GL 9.16) and in the one of financial intermediaries purchasing fund’s share/units in their own name but on behalf and pursuant to specific instructions from third parties (GL 16.20). In the light of this and of the fact that the future Regulation will not leave any margin for national regulation to fill this gap, we would welcome the inclusion in the AMLR of provisions specifically regulating the CDD measures obliged entities shall carry out towards beneficial owners on whose behalf a transaction or activity is being conducted (directly in the text, e.g. by including in article 18 a provision requiring the obliged entity to invite the customer to declare whether the business relationship or the transaction is requested for

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			the benefit of a third party, or by mandating the AMLA to provide some specific criteria on how to fulfil the CDD obligations towards this type of beneficial owner with RTS pursuant article 22.1 point a). SE: (Comments): We suggest that also the other articles in chapter IV concerning identifying of BOs are mentioned. ES: (Comments): ok
			DE: (Comments): As Article 32 (1) stipulates, the PeP-check is a standard measure of CDD. It should therefore be integrated into the catalogue of standard CDD measures in Article 16 section 1. <u>Drafting suggestion:</u> (d) determine whether the customer or the beneficial owner of the customer is a politically exposed person pursuant to Article 32.
(c) assess and, as appropriate, obtain information on the purpose	(c) assess and, as appropriate, obtain information on the purpose		NL: (Comments): (c) assess and, ~~as appropriate,~~ obtain information on the purpose and intended nature of the business relationship;

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
and intended nature of the business relationship;	and intended nature of the business relationship;		we would prefer to remove the words “as appropriate”. BE: (Comments): NBB <u>drafting suggestion</u> : ‘(c) assess and, as appropriate, obtain information on the purpose and intended nature of the business relationship <u>or the occasional transactions, including, when necessary, information about the origin and destination of the funds;</u>’ 1) = for consistency with paragraph 2 which provide that “<i>Obligated entities shall determine the extent of the measures referred to in paragraph 1 on the basis of an individual analysis of the risks of money laundering and terrorist financing having regard to the specific characteristics of the client and of the business relationship or occasional transaction</i>”. 2) under article 21, information about the origin of the funds may have to be taken into account but there is no obligation to get them in the KYC measures. We have adapted article 16 in this respect. In addition, information about the origine/destination of the funds may be necessary for enhanced DD (article 28). DE: (Comments): Wording streamlined with Article 20; further explanation for wording change cf. at Article 20..

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			(e) obtain information on and have a general understanding of the purpose and intended nature of the transaction or business relationship pursuant to Article 20
			BE: (Comments): <i>NBB drafting suggestion:</i> <u>(cbis) assess and, as appropriate, obtain information on the specific characteristics of the customer, including its business activity and/or sources of revenues</u>”. The monitoring requirement set out in point b) and the individual analysis referred to in paragraph 2 imply that the OE has a knowledge of the customer that goes beyond its mere identity (paragraph 2 which provides that “Obligated entities shall determine the extent of the measures referred to in paragraph 1 on the basis of an individual analysis of the risks of money laundering and terrorist financing having regard to the specific characteristics of the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<i>client</i> ”). Therefore, we suggest to clarify that there is a requirement to “assess and, as appropriate, obtain information on the specific characteristics of the clients, including its business”.
(d) conduct ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of the business relationship to ensure that the transactions being conducted are consistent with the obliged entity's knowledge of the customer, the business and risk profile, including where necessary the source of funds.	(d) conduct ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of the business relationship to ensure that the transactions being conducted are consistent with the obliged entity's knowledge of the customer, the business and risk profile, including where necessary the source of funds.		BE: (Comments): NBB: as it is written, this obligation is only applicable on transactions undertaken in the course of a business relationships. It does not include the obligation to verify that <u>occasional transactions</u> are consistent with the obliged entity's knowledge of the customer, the business and risk profile, including where necessary the source of funds. It is why the Belgian Law adopted an alternative wording : “<u>applying due diligence with regard to occasional transactions, as well as</u> ongoing due diligence with regard to the transactions carried out during a business relationship” ES: (Comments): Please see comments to article 13(2) and article 21 We consider that groups must have a comprehensive view of their customers in order to

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			ensure its adequate individual risk assessment and a consistent treatment within the group.
			BE: (Comments): NBB drafting suggestion: <u>‘e) based on information obtained pursuant to points (a) to (cbis), allocate a risk profile to the customers.’</u> The monitoring requirement set out in point b) imply that the OE has allocated a risk profile to the customer. However, there is no obligation to do so. This obligation is only indirectly formulated, which creates some confusion within the OE -> We suggest to include this point as a new point e).
When applying the measures referred to in points (a) and (b) of the first subparagraph, obliged entities shall also verify that any person purporting to act on behalf of	When applying the measures referred to in points (a) and (b) of the first subparagraph, obliged entities shall also verify that any person purporting to act on behalf of		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
the customer is so authorised and shall identify and verify the identity of that person in accordance with Article 18.	the customer is so authorised and shall identify and verify the identity of that person in accordance with Article 18.		
2. Obligated entities shall determine the extent of the measures referred to in paragraph 1 on the basis of an individual analysis of the risks of money laundering and terrorist financing having regard to the specific characteristics of the client and of the business relationship or occasional transaction, and taking into account the risk assessment by the obliged entity pursuant to Article 8 and the	2. Obligated entities shall determine the extent of the measures referred to in paragraph 1 on the basis of an individual analysis of the risks of money laundering and terrorist financing having regard to the specific characteristics of the client and of the business relationship or occasional transaction, and taking into account the risk assessment by the obliged entity pursuant to Article 8 and the		BE: (Comments): <i>NBB drafting suggestion:</i> “ ..., and taking into account the business-wide risk assessment by the obliged entity pursuant to Article 8 and the money laundering and terrorist financing variables set out in Annex I as well as the risk factors set out in Annexes II and III.” LV: (Comments): We suggest that Article 8 should be corrected to Article 7 according to PCY corrections.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
money laundering and terrorist financing variables set out in Annex I as well as the risk factors set out in Annexes II and III.	money laundering and terrorist financing variables set out in Annex I as well as the risk factors set out in Annexes II and III.		
Where obliged entities identify an increased risk of money laundering or terrorist financing they shall take enhanced due diligence measures pursuant to Section 4 of this Chapter. Where situations of lower risk are identified, obliged entities may apply simplified due diligence measures pursuant to Section 3 of this Chapter.	Where obliged entities identify an increased risk of money laundering or terrorist financing they shall take enhanced due diligence measures pursuant to Section 4 of this Chapter. Where situations of lower risk are identified, obliged entities may apply simplified due diligence measures pursuant to Section 3 of this Chapter.		

Table 2 of 3

Replies from: HR CY SK SI HU NL IT EE AT BE SE EL FR ES FI LV IE DK BG DE LT MT

Updated: 08/11/2022 16:19

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
3. By [2 years after the date of application of this Regulation], AMLA shall issue guidelines on the risk variables and risk factors to be taken into account by obliged entities when entering into business relationships or carrying out occasional transactions.	3. By [2 years after the date of application of this Regulation], AMLA shall issue guidelines on the risk variables and risk factors to be taken into account by obliged entities when entering into business relationships or carrying out occasional transactions.		
4. Obligated entities shall at all times be able to demonstrate to their supervisors that the measures taken are appropriate in view of the risks of money laundering and terrorist financing that have been identified.	4. Obligated entities shall at all times be able to demonstrate to their supervisors that the measures taken are appropriate in view of the risks of money laundering and terrorist financing that have been identified.		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
<i>Article 17</i>	<i>Article 17</i>		
Inability to comply with the requirement to apply customer due diligence measures	Inability to comply with the requirement to apply customer due diligence measures		
1. Where an obliged entity is unable to comply with the customer due diligence measures laid down in Article 16(1), it shall refrain from carrying out a transaction or establishing a business relationship, and shall terminate the business relationship and consider filing a suspicious	1. Where an obliged entity is unable to comply with the customer due diligence measures laid down in Article 16(1), it shall refrain from carrying out a transaction or establishing a business relationship, and shall terminate the business relationship or adopt alternative measures to	To reflect concerns raised in reaction to PCY Amendments 30 June regarding difficulties obliged entities like life insurers experience when having to comply with sectorial rules prohibiting them from terminating business relationship on one hand and with AML rules according to which they must terminate it, on the other hand.	IT: (Comments): We disagree with the proposed addition which is not formally aligned with the FATF Recs and in substance risks to provide OEs with an easy way to circumvent the obligation to refrain from carrying out a transaction/initiating a business relationship when they are unable to fulfil CDD requirements. We believe that objective difficulties some OEs might face in implementing such provision, for example due to a prohibition to unilaterally terminate business, should be addressed more punctually, instead of generally introducing the possibility to adopt alternative measures. EE: (Comments): EE Comment. The wording of the amendment seems to be much wider than the PCY comment

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
transaction report to the FIU in relation to the customer in accordance with Article 50.	mitigate such risks and consider filing a suspicious transaction report to the FIU in relation to the customer in accordance with Article 50.		reflects. It seems to be applicable in undefined circumstances and no reference to the life insurance is made. BE: (Comments): NBB: We are pleased to read that the Pcy has retained the point that we have raised as regard the difficulty experienced by some financial institutions in terminating a business relationship when they are unable to comply with the CDD requirements, and the flexibility that the Pcy amendment will allow in this regard, framed by level 2 rules to be adopted by AMLA pursuant Article 22(1)e. We remind <u>this would entirely be in line with what is expressly permitted by the FATF (see in this regard para 64 of the FATF Guidance for a risk-based approach for the life insurance sector)</u>. However: - The link with Article 22(1)e is not obvious; - we believe the situations where an alternative measure can be taken should remain exceptional and the obligation to terminate the business relationship should stay the rule -> these situations should be better framed → <u>Drafting suggestion:</u>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			keeping para 1, first subpara as it was before (= as suggested by COM in its initial proposal), and adding a second subpara, as following: “However, the AMLA shall develop draft regulatory technical standards specifying particular cases where obliged entities are authorized to implement restrictive measures as an alternative to ending the business relationship, when the unilateral termination of the business relationship by the obliged entity is prohibited by other mandatory statutory provisions or public policy provisions, or if such a unilateral termination would have a severe and disproportionate negative impact on the obliged entity.” FR: (Comments): We have trouble seeing what these alternative measures to mitigate the risks of not having been able to carry out due diligence measures are. The possibility of adopting alternative measures to terminating the business relation should be limited to specific cases where the risk is lower or those alternative measures should be spelled out clearly. This formulation is too broad. ES: (Comments): We could only accept this amendment when the sectoral rules allow this option of "adopting

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			alternative measures" to avoid the termination of the relationship. In other cases, we believe that the final decision cannot be left to the SO. Therefore, in the absence of an enabling rule, the relationship should be terminated where CCD measures cannot be complied with. Consequently, we suggest:: <i>"....and shall terminate the business relationship or when <u>sectoral rules forbid the former actions</u> adopt alternative measures to mitigate such risks..."</i> BG: (Comments): Perhaps the wording must be changed a bit so that the option "or adopt alternative measures to mitigate such risks " is not misused. For example, if the problem regarding life insurance occurs only for the termination of the business relationship, then the "alternative measures" could be envisioned only for cases of termination, and not for refraining from carrying out a transaction or establishing a business relationship. DE: (Comments): Is this amendment consistent with FATF Rec. 10? LT: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			We have reservations on such drafting, as the provision is very broad and abstract. “Alternative measures” term should be explained, as well as to which types of obliged entities it would apply.
The first subparagraph shall not apply to notaries, lawyers and other independent legal professionals, auditors, external accountants and tax advisors, to the strict extent that those persons ascertain the legal position of their client, or perform the task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding	The first subparagraph shall not apply to notaries, lawyers and other independent legal professionals, auditors, external accountants and tax advisors, to the strict extent that those persons ascertain the legal position of their client, or perform the task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding	Typo	DE: (Comments): Please refer to our comments on Art. 51 AMLR. The proposed exemption would also need to be incorporated for this paragraph.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
such proceedings. https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=cele x:32018L0843	such proceedings. ~~https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=cele x:32018L0843~~		
2. Where obliged entities either accept or refuse to enter in a business relationship, they shall keep record of the actions taken in order to comply with the requirement to apply customer due diligence measures, including records of the decisions taken and the relevant supporting documents. Documents, data or information held by the obliged entity shall be updated whenever the	2. Where obliged entities either accept or refuse to enter in a business relationship, or when they decide to terminate the relationship , they shall keep record of the actions taken in order to comply with the requirement to apply customer due diligence measures, including records of the decisions taken and the relevant supporting documents. Documents, data or information held by the	To be symmetrical with entering into business relationship.	NL: (Comments): We agree with the PSYs drafting suggestion. Additionally, de-risking of specific groups is an issue in multiple MSs which leads to specific groups having difficulties to access payment services. Record keeping is a step in the right direction to address this issue, however, more might be needed. We could take into consideration requiring credit institutions (since they are central in access to payment services) to share the statistics on the clients that were refused/had their relationship terminated on an aggregated level with the supervisor. This would allow for the supervisor to pick up on signals of systematic refusals/termination of relationships regarding specific groups. FR: (Comments): For consistency, if we were to retain “alternative measures” here, it is necessary to also mention any potential “alternative measures” established

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
customer due diligence is reviewed pursuant to Article 21.	obliged entity shall be updated whenever the customer due diligence is reviewed pursuant to Article 21.		pursuant to Article 17(1). We also believe justifications of the decisions taken should be recorded. <i>2. Where obliged entities either accept or refuse to enter in a business relationship, ~~or when they decide to terminate the relationship~~, or when they decide to adopt alternative measures pursuant to paragraph 1 of this Article, they shall keep record of the actions taken in order to comply with the requirement to apply customer due diligence measures, including records of the decisions taken and the relevant supporting documents and justifications. Documents, data or information held by the obliged entity shall be updated whenever the customer due diligence is reviewed pursuant to Article 21.</i> ES: (Comments): We suggest adding “Where obliged entities either accept or refuse to enter in a business relationship, or when they decide to terminate the relationship, <u>or adopt alternative measures</u> ...” since ‘alternative measures’ are now another option according to paragraph 1 of this article

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
<i>Article 18</i>	<i>Article 18</i>		
Identification and verification of the customer's identity	Identification and verification of the customer's identity		
1. With the exception of cases of lower risk to which measures under Section 3 apply and irrespective of the application of additional measures in cases of higher risk under Section 4 obliged entities shall obtain at least the following information in order to identify the customer and the person acting on their behalf:	1. With the exception of cases of lower risk to which measures under Section 3 apply and irrespective of the application of additional measures in cases of higher risk under Section 4 obliged entities shall obtain at least the following information in order to identify the customer and the person acting on their behalf:		NL: (Comments): Do the words "<i>With the exception of cases of lower risk to which measures under Section 3 apply</i>" mean that this information is not required in case of SCDD? Article 27 does not seem to indicate this. DE: (Comments): Insertion of "party to the intermediated transaction"; because of changes to Article 15 and intermediated transactions. Insertion of "person purporting to act on behalf of either": logical consequence of the OE's duty to identify such person pursuant to Article 16. 1. With the exception of cases of lower risk to which measures under Section 3 apply and irrespective of the application of additional measures in cases of higher risk under Section 4

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			obliged entities shall obtain at least the following information in order to identify, as applicable , the customer, a party to the intermediated transaction and a person purporting to act on behalf of either:
(a) for a natural person:	(a) for a natural person:		
(i) the forename and surname;	(i) the forename and surname;		
(ii) place and date of birth;	(ii) place and date of birth;		
(iii) nationality or nationalities, or statelessness and refugee or subsidiary protection status where applicable, and the national identification number, where applicable;	(iii) nationality or nationalities, or statelessness and refugee or subsidiary protection status where applicable, and the national identification number, where applicable;		BE: (Comments): NBB: This is not currently required by Belgian Law. Shall this requirement apply on new customers only, or will the obliged entities be required to systematically complete the information they hold regarding each and all their existing customers ? In the latest case, this

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			would be an extremely heavy workload for obliged entities, including for financial institutions, and the existing customers might not understand the reasons why they have to provide additional information... we could imagine to delay this obligation for existing customers to the next update of their KYC data, but even then, IT systems of financial institutions should be adapted and this would lead to huge costs et delays – without clear added-value.
(iv) the usual place of residence or, if there is no fixed residential address with legitimate residence in the Union, the postal address at which the natural person can be reached and, where possible, the occupation, profession, or employment	(iv) the usual place of residence or, if there is no fixed residential address with legitimate residence in the Union, the postal address at which the natural person can be reached and, where possible, the occupation, profession, or employment		NL: (Comments): (iv) the usual place of residence or, if there is no fixed residential address with legitimate residence in the Union, the postal address at which the natural person can be reached and, where possible, the occupation, profession, or employment status and the tax identification number; EE: (Comments): EE Comment. We would like to propose to add to the list “contact details”. In practice Estonian authorities see a great merit in collecting contact details, especially if the client or a party to the transaction is a non-resident due to the fact that

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
status and the tax identification number;	status and the tax identification number;		getting contact with a person might be necessary during investigative processes and without this information it could be hindered. In addition, this information could be used as an additional data point to distinguish on person from another (persons with the same name etc.) and is necessary information for the service provider when it needs to update information about the customer to conduct ongoing monitoring of the business relationship. DE: (Comments): An obligation to obtain the data mentioned in the deleted passage for purposes of (general) customer due diligence seems disproportionate. This data is not necessary to clearly identify the customer and, thus, leads to unnecessary red tape. Since this data would have to be verified, customers could not be identified solely by their identity card or passport anymore, which would cause unnecessary burden for the obliged entities as well as the customers. Drafting suggestion: (iv) the usual place of residence or, if there is no fixed residential address with legitimate residence in the Union, the postal address at which the natural person can be reached ~~and~~

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			where possible, the occupation, profession, or employment status and the tax identification number;
(b) for a legal entity:	(b) for a legal entity:		EE: (Comments): EE Comment. The same comment as in the article 18 section 1 (a) (iv).
(i) legal form and name of the legal entity;	(i) legal form and name of the legal entity;		
(ii) address of the registered or official office and, if different, the principal place of business, and the country of incorporation;	(ii) address of the registered or official office and, if different, the principal place of business, and the country of incorporation;		
(iii) the names of the legal representatives as well as, where available, the	(iii) the names of the legal representatives as well as, where available, the		BE: (Comments): NBB: See above : same question as regards the tax identification number and the Legal Entity

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
registration number, the tax identification number and the Legal Entity Identifier. Obligated entities shall also verify that the legal entity has activities on the basis of accounting documents for the latest financial year or other relevant information;	registration number, the tax identification number and the Legal Entity Identifier. Obligated entities shall also verify that the legal entity has activities on the basis of accounting documents for the latest financial year or other relevant information;		Identifier, or accounting documents for the latest financial year Extreme workload without clear added-value DE: (Comments): A general obligation to obtain the data mentioned in the deleted passage seems disproportionate. This data is not necessary to clearly identify the legal representatives and, thus, leads to unnecessary red tape. Since this data would have to be verified, legal representatives could not be identified solely by an extract from a register anymore, which would cause unnecessary burden. Rather more, in all cases companies are involved it would be necessary to provide further documentation. We suggest a new subsection (v) that stipulates risk-based obtainment of this data, see below. (iii) the names of the legal representatives as well as, where available, the registration number, the tax identification number and the Legal Entity Identifier. ~~Obligated entities shall also verify that the legal entity has activities on the basis of accounting documents for the latest financial year or other relevant information;~~
			DE:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			(Comments): This data should only be obtained in specific risk cases. However, in these cases, further to the data mentioned in the Commission draft, and in parallel to the obtainment of data on professional activity from natural persons (a) , the business activity of a legal entity should be determined. This is justified by the fact that Annex I 1 (a) mentions “business activity” as a central risk variable, and by the fact that any meaningful assesment pursuant to Article 20, Article 21 section 1 and Article 28 section 2 is only possible if an OE knows the customer’s line of business. Determination whether an entity really has business activities should also take place (only) in these specific risk cases. The passage on verification on the basis of accounting documents is shifted to (4) which deals with verification. (iv) where relevant having regard to the risk posed by the customer and by the transaction or business relationship obliged entities shall also determine the business activity of the legal entity and determine whether legal entity has activities.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(c) for a trustee of an express trust or a person holding an equivalent position in a similar legal arrangement:	(c) for a trustee of an express trust or a person holding an equivalent position in a similar legal arrangement:		
(i) the information referred to in Article 44(1), points (a) and (b), and in point (b) of this paragraph for all the persons identified as beneficial owners;	(i) the information referred to in Article 44(1), points (a) and (b), and in point (b) of this paragraph for all the persons identified as beneficial owners;		NL: (Comments): (i) the information referred to in Article 44(1), points (a) and (b), and in point (ba) of this paragraph for all the persons identified as beneficial owners; DE: (Comments): The collection of the full set of data pursuant to Article 44 by OEs seems disproportionate and would turn AML/CTF-compliance by OEs into an ever more formalistic activity (see our comment and proposal on p. 334).
(ii) the address of residence of the trustee(s) or person(s) holding an equivalent	(ii) the address of residence of the trustee(s) or person(s) holding an equivalent		NL: (Comments): (ii) ~~the address of residence of the trustee(s) or person(s) holding an equivalent position in a similar legal arrangement, and~~ the powers that regulate and bind the legal arrangements, as

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
position in a similar legal arrangement, and the powers that regulate and bind the legal arrangements, as well as, where available, the tax identification number and the Legal Entity Identifier;	position in a similar legal arrangement, and the powers that regulate and bind the legal arrangements, as well as, where available, the tax identification number and the Legal Entity Identifier;		well as, where available, the tax identification number and the Legal Entity Identifier; Trustees and persons holding an equivalent position in a similar legal arrangement are also BOs and therefore the residential address is already covered by (i). More clarity is needed on what “<i>the powers that regulate and bind the legal arrangement</i>” are. We assume that this relates to the written legal documents in which this arrangement is stipulated but it is not entirely clear from the text. Also, many different legal arrangements could exist; maybe not all (entirely) written down. In NL similar legal arrangements are contractual agreements which are not considered legal entities and will therefore not have an LEI.
(d) for other organisations that have legal capacity under national law:	(d) for other organisations that have legal capacity under national law:		DE: (Comments): Please reconsider whether (d) has any scope of application beside (b) (legal entities).
(i) name, address of the registered office or equivalent;	(i) name, address of the registered office or equivalent;		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(ii) names of the persons empowered to represent the organisation as well as, where applicable, legal form, tax identification number, register number, Legal Entity Identifier and deeds of association or equivalent.	(ii) names of the persons empowered to represent the organisation as well as, where applicable, legal form, tax identification number, register number, Legal Entity Identifier and deeds of association or equivalent.		
			BE: (Comments): NBB: we suggest adding this provision: <u>“In cases obliged entities cannot obtain all the information listed under the previous subparagraph for compelling reasons, they shall record these reasons and ensure that the information effectively obtained is sufficient for distinguishing the concerned customer from any other person.”</u> Based on our experience, there are cases where it is not reasonably possible to obtain all the above listed information. For instance, in some foreign countries, the precise date and place of birth was not officially recorded in the past, so that it is impossible for the concerned natural persons to

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			provide this information for complying with AML/CFT legal requirements. This can give rise to “derisking” decisions by OE against these persons. This should be avoided.
2. For the purposes of identifying the beneficial owner of a legal entity, obliged entities shall collect the information referred to in Article 44(1), point (a), and the information referred to in paragraph 1, point (b), of this Article.	2. For the purposes of identifying the beneficial owner of a legal entity, obliged entities shall collect the information referred to in Article 44(1), point (a), and the information referred to in paragraph 1, point (b), of this Article.		IT: (Comments): We would like to reaffirm our preference for having two separate BO data set: i) one addressed to the legal entities for the fulfillment of transparency obligations; ii) another (more limited) for the purpose of CDD measures to be put in place by obliged entities. Therefore, we are not in favor of linking the OEs obligation to identify the BO with the BO information set out in article 44(1), point (a). Our concern is that requiring a too detailed set of information for CDD purposes might disincentive OEs to carry out substantial researches to identify the BO regardless of what the customer reported to the registry. DE: (Comments): The collection of the full set of data pursuant to Article 44 by OEs seems disproportionate and would turn AML/CTF-compliance by OEs into an ever more formalistic activity. The role of OEs on the one hand, and of the corporate and legal entities pursuant to Article 42 in BO transparency are fundamentally different – this

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			should be reflected in the amount of data to be collected; uniformity is neither necessary nor desirable. 2. For the purposes of identifying the beneficial owner of a legal entity, obliged entities shall collect ~~referred to in Article 44(1), point (a), and the information referred to in paragraph 1, point (b), of this Article.~~ at least the following information: (a) the forename and surname; (b) place and date of birth (c) the usual place of residence
Where, after having exhausted all possible means of identification pursuant to the first subparagraph, no natural person is identified as beneficial owner, or where there is any doubt that the person(s) identified is/are the beneficial owner(s), obliged entities shall identify the natural person(s) holding the	Where, after having exhausted all possible means of identification pursuant to the first subparagraph, no natural person is identified as beneficial owner, or where there is any doubt that the person(s) identified is/are the beneficial owner(s), obliged entities shall identify the natural person(s) holding the	To symmetrically reflect this adjustment vis-a-vis beneficial owners.	NL: (Comments): In practice we see quite a bit of confusion and divergence between OE's and jurisdictions as to whether to identify <i>all</i> members of the senior management in this case, of to pick which ones to identify. In our view it should be <i>all</i>, because: this would be a clear rule and thus easier to apply; this would prevent unnecessary discrepancy reports to the register in case a different senior manager is 'picked'; this approach would be the most clear from a user perspective, as picking a certain senior manager would imply that this person is a BO, while identifying all members of senior management makes it clear that they are identified because of their function.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
position(s) of senior managing official(s) in the corporate or other legal entity and shall verify their identity. Obligated entities shall keep records of the actions taken as well as of the difficulties encountered during the identification process, which led to resorting to the identification of a senior managing official.	position(s) of senior managing official(s) in the corporate or other legal entity and shall take reasonable measures to verify their identity. Obligated entities shall keep records of the actions taken as well as of the difficulties encountered during the identification process, which led to resorting to the identification of a senior managing official.		Text suggestion: [...]obliged entities shall identify all the natural person(s) holding the position(s) of senior managing official(s) in the corporate or other legal entity and shall take reasonable measures to verify their identity.[...]" DE: (Comments): There are legal persons and arrangements which have no beneficial owner. In Germany this applies, for example, to non-commercial associations (Idealverein), which usually do not have beneficial owners as the members have no participation in the capital of the association and also cannot control the association based on their membership. <u>Drafting suggestion:</u> Where there is no beneficial owner or where, after having exhausted all possible means of identification pursuant to the first subparagraph, no natural person is identified as beneficial owner, or where there is any doubt that the person(s) identified is/are the beneficial owner(s), obliged entities shall identify the natural person(s) holding the position(s) of

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			senior managing official(s) in the corporate or other legal entity and shall verify their identity.
3. In the case of beneficiaries of trusts or similar legal entities or arrangements that are designated by particular characteristics or class, an obliged entity shall obtain sufficient information concerning the beneficiary so that it will be able to establish the identity of the beneficiary at the time of the payout or at the time of the exercise by the beneficiary of its vested rights.	3. In the case of beneficiaries of trusts or similar legal entities or arrangements that are designated by particular characteristics or class, an obliged entity shall obtain sufficient information concerning the beneficiary so that it will be able to establish the identity of the beneficiary at the time of the payout or at the time of the exercise by the beneficiary of its vested rights.		NL: (Comments): 3. In the case of beneficiaries of express trusts or similar legal entities or arrangements that are designated by particular characteristics or class, an obliged entity shall obtain sufficient information concerning the beneficiary so that it will be able to establish the identity of the beneficiary at the time of the payout or at the time of the exercise by the beneficiary of its vested rights. IE: (Comments): The phrase “express trust” should be used instead of trust where it occurs in this Reg for consistency of terminology

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
4. Obligated entities shall obtain the information, documents and data necessary for the verification of the customer and beneficial owner identity through either of the following:	4. Obligated entities shall obtain the information, documents and data necessary for the verification of the customer ~~and beneficial owner~~ identity through either of the following:	The deletion highlights different approaches to verification of identity of the customer and of the BO.	BE: (Comments): NBB: Article 18(4) seems to us far too rule-based. We must not forget either that on the basis of this text, OEs will have to update and therefore <u>to upgrade</u> their KYC files as regard existing customers; so with this text, we would impose a huge amount of work on them, without added value proportionate to the risk. DE: (Comments): We welcome the inserted changes. Insertion of “party to the intermediated transaction” and “person purporting to act on behalf”: cf. explanation at (1) above. 4. Obligated entities shall obtain the information, documents and data necessary for the verification of the ~~identity of a customer and beneficial owner~~, a party to the intermediated transaction and any person purporting to act on behalf of either ~~of the following~~ identity through the following ~~means~~:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(a) the submission of the identity document, passport or equivalent and the acquisition of information from reliable and independent sources, whether accessed directly or provided by the customer;	(a) the submission of the identity document, passport or equivalent and the acquisition of information from reliable and independent sources, whether accessed directly or provided by the customer;		DE: (Comments): The submission of an ID-document or passport should generally suffice to verify name, date and place of birth and residential address. Further verification should not be required with regard to this data; see, however, at (iii) of our proposal (a) in case of a natural person: (i) the submission of the identity document, passport or equivalent or (ii) the use of electronic identification means and relevant trust services as set out in Regulation (EU) 910/2014
(b) the use of electronic identification means and relevant trust services as set out in Regulation (EU) 910/2014.	(b) the use of electronic identification means which meet the requirements set out in Regulation (EU) 910/2014 with regard to the assurance levels ‘substantial’ or ‘high’ and relevant qualified trust	This is to reflect majority of MS supporting proposal by FR PRES on WP of 20.6.2022 on “Expected level of assurance of electronic identification and trust services in the framework of CDD”.	EE: (Comments): EE Comment. Although Estonia already has similar framework to the framework in proposal, we have been cautious and even critical due to the fact that in our practice we have noted significant difficulties for the obliged entities especially with the onboarding of the customers from third countries. We would like to note that the onboarding is not the only phase when obliged entity can mitigate the risks related with the customers. Other mitigating measures can change the risks related with the identification of the customer. Too harsh technical requirements

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	services as set out in Regulation (EU) 910/2014.		can lead to derisking and formation of risk pockets. In this light we are not very positive about further raising the bar compared to the text proposed by the Commission. Not mentioning the assurance levels will give us the opportunity to substantiate this requirement as a whole with the eIDAS regulation and give us more flexibility. DE: (Comments): We welcome the proposed changes.
			DE: (Comments): Provisions on the verification of the customers identity in case of legal entities are as yet missing from the proposal; this proposal is to fill the gap. b) in case of a legal entity: (i) obtaining an up-to-date extract from the central, commercial or companies register or comparable official register or directory, or (ii) submission of formation documents or equivalent substantiating documents. (iii) and, with regard to data obtained pursuant to Article 16 (1) b) (iv), the acquisition of information from reliable and independent

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			sources, whether accessed directly or provided by the customer; whether or not the entity has activities shall be verified on the basis of accounting documents for the latest financial year or other relevant information.
	5. Obligated entities shall obtain the information, documents and data necessary for taking reasonable measures to verify identity of beneficial owner, from a public register, the customer or other reliable sources.	This is to reflect that in their answers to the questionnaire following WP of 18.7.2022, majority of MS expressed their support for special provision dealing with verification of identity of the beneficial owner.	NL: (Comments): This paragraph implies that it is sufficient if the OE merely gets their information from one of the sources, such as a public register. We do not agree. Also, there is some unclarity between this paragraph and the next as the first mentions 'public register' but the second then mentions the BO-register separately. Public register implies that the BO-register is meant. Text suggestion: Obligated entities shall obtain the information, documents and data necessary for taking reasonable measures to verify the identity of the beneficial owners, from a public register, the customer or other reliable sources, including the customer, public registers other than the central registers referred to in Article 10 of Directive, or other reliable sources. IT: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Although we agree with the opportunity to erase the reference to BO in article 18 (4) and with the need to regulate the procedure to identify and verify the UBO separately, we believe that the proposed wording is unclear and puts all possible sources of information on the same level. Instead we suggest to set out such procedure in clearer terms and to establish a hierarchy between the steps OEs are required to take. We suggest to refer to the indications set out in par. 4.12 and 4.15 of the EBA Revised Risk factors Guidelines (i.e. firstly, ask the customer and then take all necessary and reasonable measures to verify the information). BE: (Comments): ➔ NBB: this sentence is too complicated and should be redrafted <i>Drafting suggestion</i>: “5. Obligated entities shall obtain the information, documents and data necessary for reasonably verifying the ~~taking reasonable measures to verify~~ identity of beneficial owner(s), from a public register, the customer or other reliable sources.” Or “5. <u>As far as reasonably considering each individual situation</u>, Obligated entities shall obtain the information, documents and data

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			necessary for verifying the ~~taking reasonable measures to verify~~ identity of beneficial owner(s), from a public register, the customer or other reliable sources.” DE: (Comments): We support this drafting.
For the purposes of verifying the information on the beneficial owner(s), obliged entities shall also consult the central registers referred to in Article 10 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> as well as additional information. Obligated entities shall determine the extent of the additional information to	Besides sources mentioned in the first subparagraph, ~~For~~ for the purposes of verifying the information on the beneficial owner(s), obliged entities shall also consult the central registers referred to in Article 10 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> as well as additional information. Obligated entities	Emphasis on multi-prong approach.	BE: (Comments): NBB: 1) “ <i>Obligated entities shall determine the extent of the additional information to be consulted, having regard to the risks posed by the transaction or the business relationship and the beneficial owner.</i> ” Does this mean that, in case of low risks no additional measures are required ? 2) What is meant exactly by “additional information”? the previous paragraph is already very broad: registers, documents provided by the client or other reliable sources... What do we want to be added to that here? -> <i>We suggest</i> deleting "as well as additional information" and moving the last sentence up to the end of the previous paragraph 5 (based on our suggestions above): “5. Obligated entities shall obtain the information, documents and data necessary for reasonably

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
be consulted, having regard to the risks posed by the transaction or the business relationship and the beneficial owner.	shall determine the extent of the additional information to be consulted, having regard to the risks posed by the transaction or the business relationship and the beneficial owner.		~~verifying the taking reasonable measures to~~ <u>verify identity of beneficial owner(s), from a public register, the customer or other reliable sources. Obligated entities shall determine the extent of the documents and data additional information to be consulted, having regard to the risks posed by the transaction or the business relationship and the beneficial owner(s).</u> or <u>“As far as reasonably considering each individual situation, obliged entities shall obtain the information, documents and data necessary for taking reasonable measures to verifying the identity of beneficial owners, from a public register, the customer or other reliable sources. Obligated entities shall determine the extent of the documents and data additional information to be consulted, having regard to the risks posed by the transaction or the business relationship and the beneficial owner(s).”</u> DE: (Comments): <u>Superfluous repeated identification and verification shall be avoided: According to Art. 15(1) AMLR, obliged entities have to verify the customers’ and beneficial owners’ identity for each transaction. To avoid unreasonable consumption of time and money for making the same people reappear before the obliged entity</u>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<u>again for each transaction, repeated identification and verification should only be necessary if there are reasonable doubts that the result of the last due diligence measure is no longer accurate. This would also be in line with the risk-based approach.</u> <u>Drafting suggestion:</u> For the purposes of verifying the information on the beneficial owner(s), obliged entities shall consult the central registers referred to in Article 10 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> as well as additional sources of information. Obligated entities shall determine the extent of the additional information to be consulted, having regard to the risks posed by the transaction or the business relationship and the beneficial owner
Article 19	Article 19		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Timing of the verification of the customer and beneficial owner identity	Timing of the verification of the customer and beneficial owner identity		BE: (Comments): <u>NBB drafting suggestion:</u> 'Timing of the identification and verification of the customer and beneficial owner identity'
1. Verification of the identity of the customer and of the beneficial owner shall take place before the establishment of a business relationship or the carrying out of an occasional transaction. Such obligation shall not apply to situations of lower risk under Section 3 of this Chapter, provided that the lower risk justifies postponement of such verification.	1. Verification of the identity of the customer and of the beneficial owner shall take place before the establishment of a business relationship or the carrying out of an occasional transaction. Such obligation shall not apply to situations of lower risk under Section 3 of this Chapter, provided that the lower risk justifies postponement of such verification.		BE: (Comments): <u>"NBB drafting suggestion:</u> 1. Obligated entities shall identify and verify ~~Verification of~~ the identity of the customer, and of the beneficial owner and of any person purporting to act on behalf of the customer, shall take place before the establishment of a business relationship or the carrying out of an occasional transaction. Such obligation shall not apply to situations of lower risk under Section 3 of this Chapter, provided that the lower risk justifies postponement of such verification." DE: (Comments): Sentence 1: rewording with a view to addition of subpara 2; cf. explanation at Article 15. Insertion of "person purporting to act on behalf" as a logical consequence of OE's duty to identify such person pursuant to Article 16 (1).

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Sentence 2: The reference to Article 27 (1) (a) is redundant; with its – apparent – stipulation of a further condition for applying simplified CDD, it may even be confusing. Insertion of new subparagraph cf. explanation at Article 15. 1. Obligated entities shall identify and verify the identity of the customer, of a person purporting to act on its behalf and of the beneficial owner before the establishment of a business relationship or the carrying out of an occasional transaction. ~~Such obligation shall not apply to situations of lower risk under Section 3 of this Chapter, provided that the lower risk justifies postponement of such verification.~~ Obligated entities whose business activity consists in intermediating transactions between third parties shall identify and verify the identity of any third party to the intermediated transaction, of any person purporting to act on their behalf, and of the beneficial owners as soon as the parties to the prospective transaction express a serious interest in the conclusion of the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			transaction and the parties to the transaction are sufficiently clear.
2. By way of derogation from paragraph 1, verification of the identity of the customer and of the beneficial owner may be completed during the establishment of a business relationship if necessary so as not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing. In such situations, those procedures shall be completed as soon as practicable after initial contact.	2. By way of derogation from paragraph 1, verification of the identity of the customer and of the beneficial owner may be completed during the establishment of a business relationship if necessary so as not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing. In such situations, those procedures shall be completed as soon as practicable after initial contact.		EE: (Comments): EE Comment. We would prefer if the wording “little risk” would be replaced with some more familiar wording, e.g. “low risk” or “low degree of risk”. BE: (Comments): <u>NBB drafting suggestion:</u> 2. By way of derogation from paragraph 1, verification of the identity of the customer and of the beneficial owner may be completed during the establishment of a business relationship if necessary so as not to interrupt the normal conduct of business and where there is a lower little risk of money laundering or terrorist financing. In such situations, those procedures shall be completed as soon as practicable after initial contact.

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

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			DE: (Comments): Obligated entities that frequently establish several business relationships with one customer (e.g. notaries) shall have the opportunity to reuse already collected information on the identification and verification of the customer in question. Drafting suggestion: <i>By way of derogation from paragraph 1, verification of the identity may be waived if the obliged entity has already identified and verified the identity of its customer on a previous occasion in the course of fulfilling its due diligence obligations and has recorded the information collected in the process. If, due to external circumstances, the obliged entity has doubts as to whether the information collected during the previous identification and verification is still accurate, it shall carry out a new identification and verification.</i>
4. Whenever entering into a new business	4. Whenever entering into a new business		NL: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
relationship with a legal entity or the trustee of an express trust or the person holding an equivalent position in a similar legal arrangement referred to in Articles 42, 43 and 48 and subject to the registration of beneficial ownership information pursuant to Article 10 of Directive [please insert reference – proposal for 6 th Anti-Money Laundering Directive - COM/2021/423 final], obliged entities shall collect proof of registration or an excerpt of the register.	relationship with a legal entity or the trustee of an express trust or the person holding an equivalent position in a similar legal arrangement referred to in Articles 42, 43 and 48 and subject to the registration of beneficial ownership information pursuant to Article 10 of Directive [please insert reference – proposal for 6 th Anti-Money Laundering Directive - COM/2021/423 final], obliged entities shall collect proof of registration or an excerpt of the register.		As we understand this article is intended to prohibit the entering into a new business relationship with an entity that has not registered its BO's. This is an important mechanism to ensure that both entities within the EU, but also from third countries, register their BO's as required. That said, in practice we see various interpretations from OE's as to whether this article (which is also part of the AMLD), indeed prohibits entering into new business relationships with entities that have not registered their BO's. As such, we propose clarification to better reflect this. Text suggestion: “<i>Whenever entering into a new business relationship with a legal entity or the trustee of an express trust or the person holding an equivalent position in a similar legal arrangement referred to in Articles 42, 43 and 48 and subject to the registration of beneficial ownership information pursuant to Article 10 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final], obliged entities shall collect proof of registration or an excerpt of the</i>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			register. If such proof of registration or an excerpt of the register cannot be collected, the obliged entity cannot enter into a business relationship with the legal entity or trustee of an express trust or persons holding an equivalent position in a similar legal arrangement. ”
Article 20	Article 20		
Identification of the purpose and intended nature of a business relationship or occasional transaction	Identification of the purpose and intended nature of a business relationship or occasional transaction		
Before entering into a business relationship or performing an occasional transaction, an obliged entity shall obtain at least the	Before entering into a business relationship or performing an occasional transaction, an obliged entity shall obtain at least the		BE: (Comments): NBB: This provision appears to be “rule based” and it could be disproportionate, not only in case of low risks (see also art. 27), but also when the purpose of the business relationship is straight forward or necessarily derives from the nature of the product (e.g. traditional life insurance). A

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
following information in order to understand its purpose and intended nature:	following information in order to understand its purpose and intended nature:		much more granular provision seems to be appropriate. DE: (Comments): The rewording is intended to clarify, that the OE does not only have to obtain information with a certain purpose, but actually has to ensure a certain level of understanding. Before entering into a business relationship or performing an occasional transaction, an obliged entity shall ~~obtain at least the following information in order to understand its purpose and intended nature~~ have a general understanding of
(a) the purpose of the envisaged account, transaction or business relationship;	(a) the purpose of the envisaged account, occasional transaction or business relationship;	To reflect suggestion raised in reactions to PCY amendments 30 June.	BE: (Comments): NBB: insofar as opening an account necessarily involves entering into a business relationship, to refer to the account in this provision seems redundant to the business relationship. → <u>Drafting suggestion</u>: (a) the purpose of the envisaged account, occasional transaction or business relationship; DE:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			(Comments): “Purpose” and “economic rationale” seem related terms and should be regrouped; please reconsider whether “economic rationale” is redundant beside “purpose” and may be deleted altogether. Separate mention of “account” is superfluous, it comes under “business relationship”. (a) the purpose and economic rationale of the envisaged transaction or business relationship; and
(b) the estimated amount and economic rationale of the envisaged transactions or activities;	(b) the estimated amount and economic rationale of the envisaged transactions or activities;		DE: (Comments): “Economic rationale” shifted to (a). “transaction” deleted, as “activities” is the broader term comprising both business relationship and transaction. (b) the estimated amount and economic rationale of the envisaged transactions or activities;

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(c) the source of funds;	(c) the source of funds;		IT: (Comments): In our view, the source of funds should not be included in the minimum data set to be collected to ascertain the nature and purposes of the relationship. Instead it should OEs should be required to collect such information only in high risk cases. BE: (Comments): NBB: In our view, it would be disproportionate to require obtaining this information in all cases: this must be assessed taking into account the characteristics of the transaction or business relationship, including the amounts implied. → <u>Drafting suggestion:</u> (c) <u>Where appropriate,</u> the source of funds; FR: (Comments): To improve feasibility, we could consider adding here “to the extent possible” or “take reasonable measures to.” By and large, it would be more consistent with a risk-based approach to differentiate between occasional transactions and actual fully-fledged business relations in terms of carrying out those due diligence measures. DE: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			The obligation to identify the source of funds seems to be part of general due diligence requirements as well as enhanced due diligence requirements. We ask for clarification whether there are qualitative differences with regard to these requirements (what exactly is meant by “additional information on the source of funds in Art. 28 para. 4 lit c and why is source of funds explicitly mentioned in Art. 32 para 2 if it is already part of general CDD)). Furthermore, we remain sceptical as to the proportionality of such a measure for general CDD Citizens should not be placed under general suspicion: The obligation to obtain and assess information on the purpose and intended nature of the business relationship significantly interferes with the privacy of citizens. Up to now, information regarding the source and destination of the funds only has to be obtained in cases of a higher risk of money laundering. Under the new proposal, what used to be only required in relevant cases is to become the general rule. This would require all citizens to provide all obliged entities with deep insights into their financial circumstances at all times – without any indication of money laundering. Furthermore, the new proposal is contrary to the risk-based approach. Obligated entities should be allowed to focus their resources on critical cases. Drafting suggestion:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			We suggest to delete lit c) Alternatively, we suggest the following drafting: (c) the source of funds, to the extent possible
(d) the destination of funds.	(d) the destination of funds.		BE: (Comments): NBB: In our view, it would be disproportionate to require obtaining this information in all cases : this must be assessed taking into account the characteristics of the transaction or business relationship, including the amounts implied. → <u>Drafting suggestion</u>: (d) <u>Where appropriate</u>, the destination of funds. FR: (Comments): Same comment than above DE: (Comments): Cf. at (c) Drafting suggestion: We suggest to delete lit d)

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Alternatively; (d) the destination of funds, to the extent possible
Article 21	Article 21		
Ongoing monitoring of the business relationship and monitoring of transactions performed by customers	Ongoing monitoring of the business relationship and monitoring of transactions performed by customers		BE: (Comments): NBB: 1) Same comment as above : this article only concerns the monitoring of transactions conducted in the course of a business relationship, but it leaves out of the regulation the monitoring of occasional transactions. 2) we suggest to clearly distinguish points a) and b); 3) under article 21, information about the origin of the funds are to be taken into account but there is no obligation to get them in the KYC measures. We have adapted article 16 in this way. -> Drafting suggestion for Art. 21: “1. Obligated entities shall conduct <u>monitoring on any occasional transactions</u> <u>and</u> ongoing monitoring of <u>any</u> business relationship, including transactions undertaken

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			by the customer throughout the course of that relationship, <u>in order</u> to: <u>a) ensure</u> that those transactions are consistent with the obliged entity's knowledge of the <u>characteristics of the</u> customer, ~~the customer's~~ <u>including its</u> business activity, <u>knowledge of the business relationship or occasional transaction, including, where necessary, with the information about the source origin of the funds,</u> and <u>with the customers'</u> risk profile, and ~~to~~ <u>b)</u> detect those transactions that shall be made subject to a more thorough analysis pursuant to Article 50.” Furthermore: 1) there should be a clear obligation to establish a risk profile of the customer. This obligation is only indirectly formulated, which creates some confusion within the OE. 2) The Belgian AML regulation currently includes additional requirements as regards the monitoring of transactions, among which the obligation to have an automated monitoring system that meets certain conditions. This is not provided for by the draft AMLR. This also means that from the entry into force of the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			AMLR, no sanction or measure can any longer be imposed on the basis of deficiencies in these automated systems. This seems not to be suitable.
1. Obligated entities shall conduct ongoing monitoring of the business relationship, including transactions undertaken by the customer throughout the course of that relationship, to control that those transactions are consistent with the obliged entity's knowledge of the customer, the customer's business activity and risk profile, and where necessary, with the information about the origin of the funds and to	1. Obligated entities shall conduct ongoing monitoring of the business relationship, including transactions undertaken by the customer throughout the course of that relationship, to control that those transactions are consistent with the obliged entity's knowledge of the customer, the customer's business activity and risk profile, and where necessary, with the information about the origin of the funds and to		NL: (Comments): 1. Obligated entities shall conduct ongoing monitoring of the business relationship, including transactions undertaken by the customer throughout the course of that relationship, to control that those transactions are consistent with the obliged entity's knowledge of the customer, the customer's business activity and risk profile, and where necessary, with the information about the origin source of the funds and to detect those transactions that shall be made subject to a more thorough analysis pursuant to Article 50. Is "origin of the funds" the same as "source of funds"? EE: (Comments): EE Comment. Would like to see and amendment that would replace "origin of the funds" with "source of funds". Consistent wording would give more clarity to the text.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
detect those transactions that shall be made subject to a more thorough analysis pursuant to Article 50.	detect those transactions that shall be made subject to a more thorough analysis pursuant to Article 50.		FR: (Comments): “<i>Obliged entities shall conduct ongoing monitoring of the business relationship, including transactions undertaken by the customer throughout the course of that relationship and the monitoring of occasional transactions, to control that those transactions are consistent with the obliged entity’s knowledge.</i>” For consistency purposes with article 20. ES: (Comments): As mentioned before, we consider that groups must have a comprehensive vision of their customers in order to ensure 1) that their risks are adequately and individually assessed and 2) their consistent treatment within the group. We would suggest adding the following clarification at the end of this paragraph “<u><i>The scrutiny of the business relationship shall be comprehensive, incorporating all the customer’s products and transactions with the obliged entity and, when a group exists, with other group entities</i></u>”

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
2. In the context of the ongoing monitoring referred to in paragraph 1, obliged entities shall ensure that the relevant documents, data or information of the customer are kept up-to-date.	2. In the context of the ongoing monitoring referred to in paragraph 1, obliged entities shall ensure that the relevant documents, data or information of the customer are kept up-to-date.		
The frequency of updating customer information pursuant to the first sub-paragraph shall be based on the risk posed by the business relationship. The frequency of updating of customer information shall in any case not exceed five years.	The frequency of updating customer information pursuant to the first sub-paragraph shall be based on the risk posed by the business relationship. The frequency of updating of customer information shall in any case not exceed five years, unless a different frequency applies pursuant to Article 22(1)(f).	In their answers to the questionnaire following WP of 18.7.2022, many MS expressed their preference for addition of specific rules on differentiation of frequency of updating customer information, as mentioned in Article 21. However, concrete frequencies proposed by MS differed. Therefore, the Presidency suggest to task AMLA with determining appropriate	SK: (Comments): We support the PCY proposal to task AMLA with determining appropriate harmonised frequencies. ES: (Comments): <u>1.</u> In the case of high ML/TF risks, we consider that the frequency of updating the customer information should be annually, as these clients should be subject to a reinforced and robust monitoring in order to ensure a properly and effective knowledge of the risk at any time. should this paragraph establish a minimum time frame for higher risk situations and a maximum time frame for lower risks situations, there is no

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
		harmonised frequencies, adjusted to the needs of type of obliged entities.	need to assign AMLA with the task of developing a RTS in this regard.. IE: (Comments): Not agreed. Entities should be able to decide the frequency using a risk based approach. AMLA should not specify timeframes for categories of business, as the risk can be different in each MS. We would have no issue with NCAs issuing guidance based on an NRA, but not AMLA.
3. In addition to the requirements set out in paragraph 2, obliged entities shall review and, where relevant, update the customer information where:	3. In addition to the requirements set out in paragraph 2, obliged entities shall review and, where relevant, update the customer information where:		
(a) there is a change in the relevant circumstances of a customer;	(a) there is a change in the relevant circumstances of a customer;		BE: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			NBB: as they seem to refer to the same thing, points (a) and (c) could be merged into a single point that would be drafted in more general terms -> <u>drafting suggestion</u> : “(a) data relevant for the individual analysis of the risks of ML/TF referred to in Article 16(2) is modified”.
(b) the obliged entity has a legal obligation in the course of the relevant calendar year to contact the customer for the purpose of reviewing any relevant information relating to the beneficial owner(s) or to comply with Council Directive 2011/16/EU ³ ;	(b) the obliged entity has a legal obligation in the course of the relevant calendar year to contact the customer for the purpose of reviewing any relevant information relating to the beneficial owner(s) or to comply with Council Directive 2011/16/EU ⁴ ;		

³ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

⁴ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(c) they become aware of a relevant fact which pertains to the customer.	(c) they become aware of a relevant fact which pertains to the customer.		NL: (Comments): (e) they become aware of a relevant fact which pertains to the customer. This should be covered by (a). BE: (Comments): NBB: points (a) and (c) could be merged into a single point that would be drafted in more general terms (see suggestion above) -> we suggest deleting this point (c).
4. By [2 years after the entry into force of this Regulation], AMLA shall issue guidelines on ongoing monitoring of a business relationship and on the monitoring of the transactions carried out in the context of such relationship.	4. By [2 years after the entry into force of this Regulation], AMLA shall issue guidelines on ongoing monitoring of a business relationship and on the monitoring of the transactions carried out in the context of such relationship.		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
<i>Article 22</i>	<i>Article 22</i>		
Regulatory technical standards on the information necessary for the performance of customer due diligence	Regulatory technical standards on the information necessary for the performance of customer due diligence		
1. By [2 years after the entry into force of this Regulation] AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify:	1. By [2 years after the entry into force of this Regulation] AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify:		

Table 2 of 3

Replies from: HR CY SK SI HU NL IT EE AT BE SE EL FR ES FI LV IE DK BG DE LT MT

Updated: 08/11/2022 16:19

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(a) the requirements that apply to obliged entities pursuant to Article 16 and the information to be collected for the purpose of performing standard, simplified and enhanced customer due diligence pursuant to Articles 18 and 20 and Articles 27(1) and 28(4), including minimum requirements in situations of lower risk;	(a) the requirements that apply to obliged entities pursuant to Article 16 and the information to be collected for the purpose of performing standard, simplified and enhanced customer due diligence pursuant to Articles 18 and 20 and Articles 27(1) and 28(4), including minimum requirements in situations of lower risk;		
(b) the type of simplified due diligence measures which obliged entities may apply in situations of lower risk pursuant to Article 27(1), including measures	(b) the type of simplified due diligence measures which obliged entities may apply in situations of lower risk pursuant to Article 27(1), including measures		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
applicable to specific categories of obliged entities and products or services, having regard to the results of the supra-national risk assessment drawn up by the Commission pursuant to Article 7 of <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> ;	applicable to specific categories of obliged entities and products or services, having regard to the results of the supra-national risk assessment drawn up by the Commission pursuant to Article 7 of <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> ;		
	(c) appropriate postponement duration under Article 27(1)(a), taking into account the lower risk factors listed in Annex II;	This is to reflect more flexibility regarding postponement of verification of identity of the customer and BO under SDD under Article 27(1)(a), as asked for in bilateral exchanges.	

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(c) the reliable and independent sources of information that may be used to verify the identification data of natural or legal persons for the purposes of Article 18(4);	(~~ed~~) the reliable and independent sources of information that may be used to verify the identification data of natural or legal persons for the purposes of Article 18(4), Article 18(5) and Article 27(1) ;	This is to reflect insertion of separate paragraph dealing with verification of identity of BO in Article 18(5) and to reflect new measure for SDD under Article 27(b).	
(d) the list of attributes which electronic identification means and relevant trust services referred to in Article 18(4), point (b), must feature in order to fulfil the requirements of Article 16, points (a), (b) and (c) in case of standard, simplified and	(~~de~~) the list of attributes which electronic identification means and relevant trust services referred to in Article 18(4), point (b), must feature in order to fulfil the requirements of Article 16, points (a), (b) and (c) in case of standard, simplified and		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
enhanced customer diligence.	enhanced customer diligence-;		
	(f) the frequency of updating customer information pursuant to Article 21(2), based on the risk posed by the business relationship, and differentiated according to the type of obliged entity;	This is to reflect second subparagraph of Article 21(2).	
	(e) the alternative measures that obliged entities may take instead of ending the business relationship under Article 17(1) to mitigating the risks from the inability to	This is to reflect Article 17(1).	IT: (Comments): See comment under article 17. EE: (Comments): EE comment. Instead of the word “ending” the word “terminating” is used in Art 17. Please consider streamlining the language. BE: (Comments): NBB: we suggest moving (and specifying) this power given to AMLA in Article 17 (see comment above)

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	comply with the customer due diligence measures;		ES: (Comments): Please, see our comment to the second paragraph of article 21 (2) AMLR. DE: (Comments): Is this in line with FATF Rec 10?
2. The requirements and measures referred to in paragraph 1, points (a) and (b), shall be based on the following criteria:	2. The requirements and measures referred to in paragraph 1, points (a) and (b), shall be based on the following criteria:		EE: (Comments): EE Comment. These requirements and measures are also relevant for the point (f).
(a) the inherent risk involved in the service provided;	(a) the inherent risk involved in the service provided;		FR: (Comments): The inherent risk of the customer involved could also be mentioned in the list below.
(b) the nature, amount and recurrence of the transaction;	(b) the nature, amount and recurrence of the transaction;		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(c) the channels used for conducting the business relationship or the occasional transaction.	(c) the channels used for conducting the business relationship or the occasional transaction.		
3. AMLA shall review regularly the regulatory technical standards and, if necessary, prepare and submit to the Commission the draft for updating those standards in order, inter alia, to take account of innovation and technological developments.	3. AMLA shall review regularly the regulatory technical standards and, if necessary, prepare and submit to the Commission the draft for updating those standards in order, inter alia, to take account of innovation and technological developments.		
4. The Commission is empowered to supplement this Regulation by adopting	4. The Commission is empowered to supplement this Regulation by adopting		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
the regulatory technical standards referred to in paragraphs 1 and 3 of this Article in accordance with Articles 38 to 41 of Regulation <i>[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]</i> .	the regulatory technical standards referred to in paragraphs 1 and 3 of this Article in accordance with Articles 38 to 41 of Regulation <i>[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]</i> .		
SECTION 2	SECTION 2		NL: (Comments): This section should be aligned with the Joint Statement prepared ahead of the working party meeting of October 11 th 2021, of which we copied the text below: - While we acknowledge the changes and improvements made by the Commission regarding our HRTC framework, we are somewhat concerned that the draft text is still based too much on the existing system in the present AMLD4, which has shown several deficiencies. We should aim at avoiding duplication with the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			FATF lists. The present process is opaque, cumbersome and takes too long. If a new AMLR comes into force, it is crucial that it allows the Member States to be fully compliant with the FATF Standards, including timely implementation of Recommendation 19. In all Articles concerned of the AMLR, a formal role for the Member States should therefore be envisaged and clear procedures should be established. Parts of the present Methodology for HRTC should be improved and be codified in the AMLR as well. This would include concrete time limits to implement FATF decisions. In addition, AMLA could be involved in the process, to ensure quality and credibility, as long as it does not deter AMLA from its core mission, namely supervision activities. - There is a need for clarification on the intended working of Article 26 and about how it relates to Articles 23-25. However, we would <u>support</u> the EU listing process aiming first and foremost at issuing guidelines on trends and typologies of transactions at risk for EU obliged entities rather than listing third countries. AMLA could play a role in identifying those types of transactions.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			- We welcome the differentiation between Articles 23 and 24. This allows for better alignment with the two FAFT lists, i.e. its black list and its grey list, since it enables lighter and/or more targeted enhanced CDD measures in the case of third countries on the FATF's grey list. However, the option of <u>not</u> applying enhanced CDD should be added in Article 24(4) as well, since the FAFT only encourages its members to "take into account" of the information presented in its risk analysis. We do not see why the EU should be more stringent than FATF on grey-listed countries. - Although Introductory Considerations 49-53 of the AMLR provide context about the need to follow FATF Public Statements, the link to these FATF statements should be strengthened and be made more explicit in Articles 23-24. FATF Public Statements and FATF Calls for Countermeasures should be implemented without delay, when the Third Countries fall within the scope of the AMLR. This necessitates a proper procedure in Articles 23 and 24, involving either automatic implementation or within a specified short timeframe. There is no need for

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			double checking by the EC on countries that are newly listed by the FATF, since the EC and many Member States fully participate in the process leading to FATF listings and the FATF employs a long-standing methodology. A proper procedure for quick implementation of FATF decisions would also help ensuring due process for countries that are de-listed by the FATF. In addition, this would be a prerequisite for EU Member States obtaining a positive rating on FATF Recommendation 19, once the AMLR is in force. - While we favour a coordinated approach to countermeasures to avoid a fracturing of the AML/CFT Third Country Policy, Member States should be involved in the decision-making process on the selection of countermeasures in Article 23(5). Furthermore, Member States should keep the possibility of taking additional countermeasures. - The Articles 23-25 should include text on communication with and involvement of the Third Countries concerned, as well as on the ways in which these countries can be removed from the EU's lists. A new methodology should elaborate on this and the AMLR should refer to it. It should be

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			made clear that Member States will be involved in the drafting and adoption of a new methodology regarding listing policy, which should differ from the current third country oriented policy, and that this process will be iterative. - We oppose Article 25. The power proposed in this article if granted, should only apply in exceptional circumstances and on the basis of strict criteria and safeguards. The criteria should be based on the FATF Methodology and be made explicit in this Article. The process should be transparent with engagement of the affected third countries and consultation of Member States. In addition, the advice from AMLA should be a requirement. EC should not primarily rely on secondary sources for its decision, but conduct, when there is no recent assessment from the FATF, a credible, autonomous assessment, including on-site visits by Commission officials. At the end of the process Member States should be involved – not only consulted – in the decision-making.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Third-country policy and ML/TF threats from outside the Union	Third-country policy and ML/TF threats from outside the Union		DE: (Comments): GER welcomes the new approach to the Union's third-country policy. We particularly welcome the idea to mirror the FATF's listing process and differentiate between "blacklisting" (article 23) and "greylisting" (article 24). We also welcome the new instrument of "guidelines on ML/TF risks, trends and methods", in which we see the potential to enhance the private sector's risk mitigating measures and make them more targeted and risk-based. We remain sceptical as to the feasibility of an autonomous listing process as provided for in article 25. It has not proven effective, strains the relationship with the affected third countries and duplicates work already done at FATF level. To create a credible process that could potentially generate additional value, the process would need to be transparent (with engagement with the affected third countries and consultation of Member States on

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			at least the same level as in the May 2020 Methodology for identifying high-risk third countries under Directive (EU) 2015/849), there would need to be a single, clear legal basis in the Regulation that sets strict material conditions for an autonomous listing and – most importantly – there would need to be a completely redesigned assessment process where the EC does not primarily rely on secondary sources for its decision, but conducts a credible, autonomous assessment, including on-site visits. Member states would eventually need to be included and not only consulted in the decision-making process. Any lesser standard would seem hard to justify in light of the serious economic consequences a listing can have for the affected third country. We have strong concerns that the Commission will not be able to provide the significantly higher resources such a credible process would demand in comparison to the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			situation today. We, therefore, see more value in focusing our reform efforts on the new instrument in Art. 26.
Article 23	Article 23		
Identification of third countries with significant strategic deficiencies in their national AML/CFT regimes	Identification of third countries with significant strategic deficiencies in their national AML/CFT regimes		DE: (Comments): As written above, GER welcomes the new approach to differentiate essentially between the FATF black and grey list. This is a logical consequence of the risk based approach. In the former methodology the EU stated that the objectives are to protect the integrity of the EU's financial system, to reinforce internal security and to promote sustainable development. We would like to see these objectives reflected in the recitals of the regulation. Also, in the publication of the May 2020 Methodology, the EU expressed its commitment to provide demand-driven technical assistance to the countries identified as high-risk

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			third countries. Especially, if the EU establishes an autonomous listing process, formulates own EU benchmarks and develops an action plan for listed third countries, the EU Commission should stick by its commitment to assist third countries and provide technical assistance to support implementation of EU requirements. This should be reflected in the recitals of the regulation.
1. Third countries with significant strategic deficiencies in their national AML/CFT regimes shall be identified by the Commission and designated as ‘high-risk third countries’.	1. Third countries with significant strategic deficiencies in their national AML/CFT regimes shall be identified by the Commission and designated as ‘high-risk third countries’.		FR: (Comments): A more direct reference to FATF could be foreseen here as follows: Third countries ~~with significant strategic deficiencies in their national AML/CFT regimes~~ , which are subject to a Call for Action regarding the application of enhanced due diligence measures or countermeasures by the FATF , shall be identified by the Commission and designated as ‘high-risk third countries’. DE: (Comments): As written above, GER remains sceptical to the continuation of an autonomous listing process. In any case, autonomous listings should not be

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			possible under the wide and indeterminate conditions of Art. 23 (which appears to be still possible under the current wording Art. 23). Therefore, we propose that Art. 23 is used solely and strictly in cases where the FATF has blacklisted a country. To accommodate this, we propose to delete paragraphs 1–3 of Art. 23. Instead, a paragraph referring to the blacklisting decisions by the FATF should be included. 1. Third countries with significant strategic deficiencies in their national AML/CFT regimes, which are subject to a Call for Action regarding the application of enhanced due diligence measures or countermeasures by the Financial Action Task Force, shall be identified by the Commission and designated as ‘high-risk third countries’.
2. In order to identify the countries referred to in paragraph 1, the Commission is empowered to adopt delegated acts in accordance	2. In order to identify the countries referred to in paragraph 1, the Commission is empowered to adopt delegated acts in accordance		FR: (Comments): “where” can be deleted and one could add the following: “The Commission shall review any delegated acts adopted under this paragraph within three months after a change to the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
with Article 60 to supplement this Regulation, where:	with Article 60 to supplement this Regulation, where:		respective FATF public document currently referred to as “High-Risk Jurisdictions subject to a Call for Action. DE: (Comments): The implementation of FATF decisions has been very slow on the European level. This is particularly difficult to understand for countries that are not subject to any autonomous listing by the EC and that have been delisted by the FATF. Henceforward FATF decisions to list or delist a country should be implemented “automatically” and within a fixed time period, as long as the regulation applies to the third country. 2. In order to identify the countries referred to in paragraph 1, the Commission is empowered to adopt delegated acts in accordance with Article 60 to supplement this Regulation. The Commission shall review any delegated acts adopted under this paragraph within three months after a change to the respective FATF public document currently referred to as “High-Risk Jurisdictions subject to a Call for Action”.

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(a) significant strategic deficiencies in the legal and institutional AML/CFT framework of the third country have been identified;	(a) significant strategic deficiencies in the legal and institutional AML/CFT framework of the third country have been identified;		FR: (Comments): The three criteria should be deleted. DE: (Comments): Delete – see above
(b) significant strategic deficiencies in the effectiveness of the third country's AML/CFT system in addressing money laundering or terrorist financing risks have been identified;	(b) significant strategic deficiencies in the effectiveness of the third country's AML/CFT system in addressing money laundering or terrorist financing risks have been identified;		DE: (Comments): Delete – see above
(c) the significant strategic deficiencies identified under points (a) and (b) are of a persistent nature and no measures to	(c) the significant strategic deficiencies identified under points (a) and (b) are of a persistent nature and no measures to		DE: (Comments): Delete – see above

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
mitigate them have been taken or are being taken.	mitigate them have been taken or are being taken.		
Those delegated acts shall be adopted within one month after the Commission has ascertained that the criteria in point (a), (b) or (c) are met.	Those delegated acts shall be adopted within one month after the Commission has ascertained that the criteria in point (a), (b) or (c) are met.		DE: (Comments): Delete – see above
3. For the purposes of paragraph 2, the Commission shall take into account calls for the application of enhanced due diligence measures and additional mitigating measures ('countermeasures') by international organisations and standard setters with	3. For the purposes of paragraph 2, the Commission shall take into account calls for the application of enhanced due diligence measures and additional mitigating measures ('countermeasures') by international organisations and standard setters with		DE: (Comments): Delete – see above

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
competence in the field of preventing money laundering and combating terrorist financing, as well as relevant evaluations, assessments, reports or public statements drawn up by them.	competence in the field of preventing money laundering and combating terrorist financing, as well as relevant evaluations, assessments, reports or public statements drawn up by them.		
4. Where a third country is identified in accordance with the criteria referred to in paragraph 3, obliged entities shall apply enhanced due diligence measures listed in Article 28(4), points (a) to (g) with respect to the business relationships or occasional transactions involving natural or legal	4. Where a third country is identified in accordance with the criteria referred to in paragraph 3, obliged entities shall apply enhanced due diligence measures listed in Article 28(4), points (a) to (g) with respect to the business relationships or occasional transactions involving natural or legal		NL: (Comments): How broad is the term “involving” to be understood? This is too broad and needs clarification; maybe through RTS? IT: (Comments): The expression “involving” used to identify the cases in which EDD measures shall be applied has so far given rise to a number of uncertainties. We would welcome some further discussion on this. DE: (Comments): Explanation for drafting suggestion: Simplification; reference is made to para (1). General remark:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
persons from that third country.	persons from that third country.		The terms “involving” and “from” seem rather broad. Please consider whether further specification is possible. From a systematic point of view, please reconsider whether the provisions on third country policy/EU-listing process on the one hand and on OEs’ enhanced CDD on the other hand should not be dealt with in separate sections. To our understanding, this para (4) could be shifted to Section 4 (Enhanced CDD). 4. Where a third country is identified as a high risk third country, obliged entities shall apply enhanced due diligence measures listed in Article 28(4), points (a) to (g) with respect to the business relationships or occasional transactions involving natural or legal persons from that third country.
5. The delegated act referred to in paragraph 2 shall identify among the countermeasures listed in	5. The delegated act referred to in paragraph 2 shall identify among the countermeasures listed in		FR: (Comments): We would propose deleting this paragraph because leaving to Member States the prerogative of setting up their own countermeasures relative to their actual risk

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Article 29 the specific countermeasures mitigating country-specific risks stemming from high-risk third countries.	Article 29 the specific countermeasures mitigating country-specific risks stemming from high-risk third countries.		exposure is both a matter of sovereignty and of compliance with Recommendation 19 and INR.19. The Commission through the aforementioned delegated act can set up a list of enhanced due diligence measures harmonized at EU level (art. 24) but it is vital that Member States have room for maneuver to implement their own countermeasures. We are willing to look at other ways such as EU implementing acts whereby Member States are better involved and some flexibility can be foreseen in terms of what countermeasures can each Member State applies to this or that HRTC (relative to their national risk exposures). DE: (Comments): We are open to coordination of countermeasures on a European level. However, we think that this should happen in the form of an implementing act in accordance with Article 291 of the TFEU. Member States must be included (and not only consulted) in the decision making process. Finally, member states should have the option to adopt further countermeasures nationally in order to reflect their potentially individual greater exposure to risks from the relevant third country. MT: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			While MT agrees that the COM should set out measures that are to be applied in case of third countries that have significant strategic deficiencies in their national AML/CFT regime, MT is of the opinion that MSs should still be allowed the possibility to mandate alternative or different measures if they consider them more effective to address the risk associated with the listed third countries within the context of their particular national condition. Since not every MS has the same exposure to each of the countries that may be listed, the measures set out by the COM may be insufficient or inadequate to address each particular scenario that may develop, even though MT would expect that any such measures would be decided upon following consultation with Member States – situations may ultimately change even following the publication of the RTSs and the listing of the country which may render the measures set out

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			by the COM as not sufficient (e.g. the introduction of new areas of economic activities which accentuate the risks emanating from the identified deficiencies). Waiting until the RTS is revised may ultimately expose Member States to risks if they are unable to mandate any additional or different measures from those proposed by the COM.
6. The Commission shall review the delegated acts referred to in paragraph 2 on a regular basis to ensure that the specific countermeasures identified pursuant to paragraph 5 take account of the changes in the AML/CFT framework of the third country and are	6. The Commission shall review the delegated acts referred to in paragraph 2 on a regular basis to ensure that the specific countermeasures identified pursuant to paragraph 5 take account of the changes in the AML/CFT framework of the third country and are		

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proportionate and adequate to the risks.	proportionate and adequate to the risks.		
<i>Article 24</i>	<i>Article 24</i>		
<i>Identification of third countries with compliance weaknesses in their national AML/CFT regimes</i>	<i>Identification of third countries with compliance weaknesses in their national AML/CFT regimes</i>		
1. Third countries with compliance weaknesses in their national AML/CFT regimes shall be identified by the Commission.	1. Third countries with compliance weaknesses in their national AML/CFT regimes shall be identified by the Commission.		FR: (Comments): More direct reference to FATF practices here too would be welcome: <i>Third countries with compliance weaknesses in their national AML/CFT regimes, which are under Increased Monitoring by the Financial Action Task Force, shall be identified by the Commission.</i> DE: (Comments): As written above, GER remains sceptical to the continuation of an autonomous listing process. In any case, – similar to Art. 23 above – autonomous listings should not be possible under the wide and indeterminate conditions of Art. 24

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			(which appears to be still possible under the current wording Art. 24). Therefore, we propose to change the wording of the article in a similar way as for Art. 23 above. 1. Third countries with compliance weaknesses in their national AML/CFT regimes, which are under Increased Monitoring by the Financial Action Task Force, shall be identified by the Commission.
2. In order to identify the countries referred to in paragraph 1, the Commission is empowered to adopt delegated acts in accordance with Article 60 to supplement this Regulation, where:	2. In order to identify the countries referred to in paragraph 1, the Commission is empowered to adopt delegated acts in accordance with Article 60 to supplement this Regulation, where:		FR: (Comments): [...]same as above <i>“The Commission shall review any delegated acts adopted under this paragraph within three months after a change to the respective FATF public document currently referred to as “Jurisdictions under Increased Monitoring.”</i> DE: (Comments): 2. In order to identify the countries referred to in paragraph 1, the Commission is empowered to adopt delegated acts in accordance with Article 60 to supplement this Regulation. The

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Commission shall review any delegated acts adopted under this paragraph within three months after a change to the respective FATF public document currently referred to as “Jurisdictions under Increased Monitoring”.
(a) compliance weaknesses in the legal and institutional AML/CFT framework of the third country have been identified;	(a) compliance weaknesses in the legal and institutional AML/CFT framework of the third country have been identified;		FR: (Comments): We propose deleting those criteria. DE: (Comments): Delete – see above.
(b) compliance weaknesses in the effectiveness of the third country’s AML/CFT system in addressing money laundering or terrorist financing risks have been identified.	(b) compliance weaknesses in the effectiveness of the third country’s AML/CFT system in addressing money laundering or terrorist financing risks have been identified.		DE: (Comments): Delete – see above.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Those delegated acts shall be adopted within one month after the Commission has ascertained that the criteria in point (a) or (b) are met.	Those delegated acts shall be adopted within one month after the Commission has ascertained that the criteria in point (a) or (b) are met.		DE: (Comments): Delete – see above.
3. The Commission, when drawing up the delegated acts referred to in paragraph 2 shall take into account information on jurisdictions under increased monitoring by international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing, as well as relevant	3. The Commission, when drawing up the delegated acts referred to in paragraph 2 shall take into account information on jurisdictions under increased monitoring by international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing, as well as relevant		DE: (Comments): Delete – see above.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
evaluations, assessments, reports or public statements drawn up by them.	evaluations, assessments, reports or public statements drawn up by them.		
4. The delegated act referred to in paragraph 2 shall identify the specific enhanced due diligence measures among those listed in Article 28(4), points (a) to (g), that obliged entities shall apply to mitigate risks related to business relationships or occasional transactions involving natural or legal persons from that third country.	4. The delegated act referred to in paragraph 2 shall identify the specific enhanced due diligence measures among those listed in Article 28(4), points (a) to (g), that obliged entities shall apply to mitigate risks related to business relationships or occasional transactions involving natural or legal persons from that third country.		NL: (Comments): How broad is the term “<i>involving</i>” to be understood? This is too broad and needs clarification; maybe through RTS? DE: (Comments): GER welcomes the use of specific EDD measures depending on the third country in question. EDD measures should be identified on the basis of agreed risk factors/criteria in order to guarantee for consistent decisions in relation to third countries and to provide for equal treatment. The Risk analysis should be based on meaningful EU information. Sources of information should be the supranational risk assessment and European institutions such as Europol, ECB, Eurojust, EBA, EIOPA, ESMA, the new AMLA etc. Moreover, MS should be included at an early stage in order to have the possibility to contribute information stemming from national sources. Also, the EU should consider unintended consequences related i.a. to shrinking space for civil society or derisking and access to finance for vulnerable groups.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Since there is no international obligation to apply EDD measures towards countries under increased monitoring by the FATF, there should be the possibility for the EC to include a country on its list without EDD measures when this is consistent with the risk-based-approach. (...)in paragraph 2 can identify the specific enhanced due diligence measures (...)
5. The Commission shall review the delegated acts referred to in paragraph 2 on a regular basis to ensure that the specific enhanced due diligence measures identified pursuant to paragraph 4 take account of the changes in the AML/CFT framework of the third country and are proportionate and adequate to the risks.	5. The Commission shall review the delegated acts referred to in paragraph 2 on a regular basis to ensure that the specific enhanced due diligence measures identified pursuant to paragraph 4 take account of the changes in the AML/CFT framework of the third country and are proportionate and adequate to the risks.		DE: (Comments): See above for consideration of unintended consequences

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
<i>Article 25</i>	<i>Article 25</i>		MT: (Comments): MT agrees that the COM should set out what additional measures should be undertaken to address the additional issues presented by these countries – the higher the level of deficiencies, the higher the level of risk and therefore the more intense the measures to be applied to counter the same. However, MS should still be allowed to introduce and require the application of additional or alternative countermeasures.
<i>Identification of third countries posing a threat to the Union's financial system</i>	<i>Identification of third countries posing a threat to the Union's financial system</i>		FR: (Comments): We propose deleting this article. DE: (Comments): As written above, we remain sceptical as to the feasibility of an autonomous listing process as provided for in article 25. It has not proven effective, strains the relationship with the affected third countries and duplicates work

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			already done at FATF level. To create a credible process that could potentially generate additional value, the process would need to fulfill certain minimum criteria: - It would need to be transparent and, thus, involve sufficient consultation of the member states and engagement with the affected third countries at least on the same level as the May 2020 Methodology for identifying high-risk third countries under Directive (EU) 2015/849 provided for; however, the process laid out in that Methodology should be detailed here in the Directive itself. - There would need to be a single, clear legal basis in the Regulation that states the material conditions for an autonomous listing. - there would need to be a completely redesigned assessment process where the EC does not primarily rely on secondary sources for its decision, but conducts a credible, autonomous assessment, including on-site visits and sufficient use of European sources (such as from the Member States and the new AMLA). Member states would need to be included and not only consulted in the decision-making-process. Any lesser standard would seem hard to justify in light of the serious economic consequences a listing can have for the affected third country. We have strong concerns that the Commission will not be able to provide the significantly higher resources such a credible

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			process would demand in comparison to the situation today. We propose to delete Article 25. Moreover, an autonomous listing seems to be also possible under Article 23 and 24. The relationship between the three provisions is not clear in that regard. This is questionable also from a rule of law perspective. Therefore, as stated above, articles 23 and 24 should be revised as indicated above to exclude this possibility. Finally, notwithstanding our questions regarding its scope and legal consequences, Art. 26 could be a better and more targeted tool to react to Union specific external ML/TF risks.
1. The Commission is empowered to adopt delegated acts in accordance with Article 60 identifying third countries that pose a	1. The Commission is empowered to adopt delegated acts in accordance with Article 60 identifying third countries that pose a		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
specific and serious threat to the financial system of the Union and the proper functioning of the internal market other than those covered by Articles 23 and 24.	specific and serious threat to the financial system of the Union and the proper functioning of the internal market other than those covered by Articles 23 and 24.		
2. The Commission, when drawing up the delegated acts referred to in paragraph 1, shall take into account in particular the following criteria:	2. The Commission, when drawing up the delegated acts referred to in paragraph 1, shall take into account in particular the following criteria:		
(a) the legal and institutional AML/CFT framework of the third country, in particular:	(a) the legal and institutional AML/CFT framework of the third country, in particular:		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(i) the criminalisation of money laundering and terrorist financing;	(i) the criminalisation of money laundering and terrorist financing;		
(ii) measures relating to customer due diligence;	(ii) measures relating to customer due diligence;		
(iii) requirements relating to record-keeping;	(iii) requirements relating to record-keeping;		
(iv) requirements to report suspicious transactions;	(iv) requirements to report suspicious transactions;		
(v) the availability of accurate and timely information of the beneficial ownership of legal persons and arrangements to competent authorities;	(v) the availability of accurate and timely information of the beneficial ownership of legal persons and arrangements to competent authorities;		

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

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addressing money laundering or terrorist financing risks;	addressing money laundering or terrorist financing risks;		
3. For the purposes of determining the level of threat referred to in paragraph 1, the Commission may request AMLA to adopt an opinion aimed at assessing the specific impact on the integrity of the Union's financial system due to the level of threat posed by a third country.	3. For the purposes of determining the level of threat referred to in paragraph 1, the Commission may request AMLA to adopt an opinion aimed at assessing the specific impact on the integrity of the Union's financial system due to the level of threat posed by a third country.		
4. The Commission, when drawing up the delegated acts referred to in paragraph 1, shall take into account in particular relevant	4. The Commission, when drawing up the delegated acts referred to in paragraph 1, shall take into account in particular relevant		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
evaluations, assessments or reports drawn up by international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing.	evaluations, assessments or reports drawn up by international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing.		
5. Where the identified specific and serious threat from the concerned third country amounts to a significant strategic deficiency, Article 23(4) shall apply and the delegated act referred to in paragraph 2 shall identify specific countermeasures as referred to in Article 23(5).	5. Where the identified specific and serious threat from the concerned third country amounts to a significant strategic deficiency, Article 23(4) shall apply and the delegated act referred to in paragraph 2 shall identify specific countermeasures as referred to in Article 23(5).		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
6. Where the identified specific and serious threat from the concerned third country amounts to a compliance weakness, the delegated act referred to in paragraph 2 shall identify specific enhanced due diligence measures as referred to in Article 24(4).	6. Where the identified specific and serious threat from the concerned third country amounts to a compliance weakness, the delegated act referred to in paragraph 2 shall identify specific enhanced due diligence measures as referred to in Article 24(4).		
7. The Commission shall review the delegated acts referred to in paragraph 2 on a regular basis to ensure that the measures referred to in paragraphs 5 and 6 take account of the changes in the AML/CFT framework of the	7. The Commission shall review the delegated acts referred to in paragraph 2 on a regular basis to ensure that the measures referred to in paragraphs 5 and 6 take account of the changes in the AML/CFT framework of the		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
third country and are proportionate and adequate to the risks.	third country and are proportionate and adequate to the risks.		
<i>Article 26</i>	<i>Article 26</i>		
<i>Guidelines on ML/TF risks, trends and methods</i>	<i>Guidelines on ML/TF risks, trends and methods</i>		
1. By [3 years from the date of entry into force of this Regulation], AMLA shall adopt guidelines defining the money laundering and terrorist financing trends, risks and methods involving any geographical area outside the Union to which obliged entities are exposed. AMLA	1. By [3 years from the date of entry into force of this Regulation], AMLA shall adopt guidelines defining the money laundering and terrorist financing trends, risks and methods involving any geographical area outside the Union to which obliged entities are exposed. AMLA		DE: (Comments): It is our understanding - that the proposed EDD measures shall be non-binding recommendations for obliged entities; - that, in contrast to Article 23-25, a geographical area under Article 25 is not a single jurisdiction, but a bigger region (for example, North Africa); - that the guidelines should not declare entire geographical areas as high risk but should be limited to certain customer risk factors or products, services, transactions or delivery channels.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
shall take into account, in particular, the risk factors listed in Annex III. Where situations of higher risk are identified, the guidelines shall include enhanced due diligence measures that obliged entities shall consider applying to mitigate such risks.	shall take into account, in particular, the risk factors listed in Annex III. Where situations of higher risk are identified, the guidelines shall include enhanced due diligence measures that obliged entities shall consider applying to mitigate such risks.		Is this understanding correct? Some further clarification in the wording of the Article would be helpful with regard to the above points. Again, MS should be included at an early stage in order to have the possibility to contribute information stemming from national sources.
2. AMLA shall review the guidelines referred to in paragraph 1 at least every two years.	2. AMLA shall review the guidelines referred to in paragraph 1 at least every two years.		
3. In issuing and reviewing the guidelines referred to in paragraph 1, AMLA shall take into	3. In issuing and reviewing the guidelines referred to in paragraph 1, AMLA shall take into		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
account evaluations, assessments or reports of international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing.	account evaluations, assessments or reports of international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing.		
SECTION 3	SECTION 3		
Simplified customer due diligence	Simplified customer due diligence		
<i>Article 27</i>	<i>Article 27</i>		
Simplified customer due diligence measures	Simplified customer due diligence measures		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
1. Where, taking into account the risk factors set out in Annexes II and III, the business relationship or transaction present a low degree of risk, obliged entities may apply the following simplified customer due diligence measures:	1. Where, taking into account the risk factors set out in Annexes II and III, the business relationship or transaction present a low degree of risk, obliged entities may apply the following simplified customer due diligence measures:		BE: (Comments): <u>NBB drafting suggestions</u> in order to align with Article 28(1): 1. ~~Where, taking into account the risk factors set out in Annexes II and III, the business relationship or transaction present~~ <u>In the cases of a lower degree of risk of money laundering and terrorist financing that are identified by obliged entities pursuant to Article 16(2),</u> obliged entities may apply the following simplified customer due diligence measures:
(a) verify the identity of the customer and the beneficial owner after the establishment of the business relationship, provided that the specific lower risk identified justified such postponement, but in any case no later than 30 days of	(a) verify the identity of the customer and the beneficial owner after the establishment of the business relationship, provided that the specific lower risk identified justified such postponement, but in any case no later than ~~30 days~~ 12	Reaction to bilateral exchange with MS.	SK: (Comments): Due to the fact that the AMLR is going to be directly applied not only by all obliged entities in the EU, but also by all corporate and non-corporate entities which need to apply simplified CDD measures, it is crucial to provide for a timeframe that is as clear, as it is logical. We do not oppose the timeframe to be extended where it is necessary, however from practical experience extension of the period from 30 days to 12 months is too extensive. We suggest

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
the relationship being established;	months or the period set out in regulatory technical standards under Article 22(1)(c) of the relationship being established;		shortening the period to a maximum of 6 months. SI: (Comments): We oppose the inclusion of the 12-month-period, it is too long. On this issue we support COM's proposal of 30 days. NL: (Comments): (a) verify the identity of the customer and the beneficial owner after the establishment of the business relationship, provided that the specific lower risk identified justified such postponement, but in any case as soon as possible and no later than 30 days 30 days 12 months or the period set out in regulatory technical standards under Article 22(1)(c) of the relationship being established; <i>12 months is way too long.</i> IT: (Comments): <u>We firmly disagree with the proposal to allow a 12 months postponement of the verification of the identity which would de facto allow obliged entities to open/close business relationships and carry out a large number of transactions without identifying their customers.</u> We want the original Commission proposal (which is – inter alia – fully aligned with the FATF standards) to be retained.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			More in general, we are rather surprised to find, at this very stage of the process, such amendments which: - have not been discussed in any working parties beforehand; - are accompanied by the mere explanation that they are the result of bilateral contacts (with a non-specified MS), without any reference to the rationale behind them. EE: (Comments): EE comment. We could support returning to the original deadline of 30 days. For us increasing the maximum period for twelve times compared to the current wording is a significant change. We have understood the provision as such that the OE should be able to verify the identity in a reasonable time, but it still should make an effort to do it as soon as possible. Having a client relationship for a one year whilst having no reasonable possibilities to acquire additional information does not seem for us as a ordinary low risk situation. We would prefer a shorter maximum period (does not have to be as short as 30 days) or alternatively a criterion, for example “in any case within a reasonable time frame and no later than X months...”. This is especially relevant given the possibility of only consulting with the register under the point c). In our opinion there should not be a possibility to apply

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			point a and point c simultaneously in a manner where the consultation of the register is conducted months after the establishment of the business relationship. We understand that this can be mitigated with the RTS, but the current text does not reflect this in any way, and we are still critical about the 12 months maximum period without any other criteria as well. Very strict requirements for the identification of persons using info technological tools in combination with the possibility to postpone this CDD can result in the extensive postponement of the CDD measures by the OEs altogether. BE: (Comments): NBB: Replacing 30 days by 12 months seems difficult to justify and might not be compliant with FATF' Rec 10, stating that "<i>Countries may permit financial institutions to complete the verification as soon as reasonably practicable following the establishment of the relationship, where the money laundering and terrorist financing risks are effectively managed and where this is essential not to interrupt the normal conduct of business.</i>" EL: (Comments): We do not agree with such a long postponement of the performance of customer identity verification measures, even in low risk situations. We propose to stick to 30 days,

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			though we could accept as a compromise a 3 months postponement under proven low risk. FR: (Comments): France recognizes the concerns voiced by MS that the 12-month postponement is too long and potentially not FATF-compliant. However, <u>we strongly oppose returning to a 30-day deadline</u> which is disproportionately restrictive and not compatible with a risk-based approach as is currently the case in art. 15 of AMLD4: if we apply this uniform deadline, all transactions will be treated in the same manner regardless of the actual risk exposure. A Commission delegated act could be entrusted to define the appropriate maximum deadlines by differentiating between sectors and/or activities while leaving some leeway for obliged entities to set the actual deadline triggering the identity verification requirement based on their assessment of the risks from their customers, geographies and products. ES: (Comments): We do not see the rationale to increase the timeline x12. We would suggest to keep the initial timeline and give AMLA the power to enlarge it (see comments on article 22.1.c) LV: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			We do not support 12-month period, replacing the 30-day period proposed by COM, because it is too long for the verification of the identity of the client and BO, even in SDD, thereby unnecessarily increasing the client's risk. We would support a maximum of 45 days. We agree with the opinion of Italian and Slovenia colleagues regarding this Article. BG: (Comments): Changing the period from “30 days” to “12 months” is a significant change. If the situation in reality is low risk, then the verification of the obliged entity should not be a difficult thing for the OE to do. What merits such a long period? We should be careful giving such a long period. DE: (Comments): We are concerned that the fixed 30-day deadline for the postponement of verification of identity may be disproportionate and would not fit well with the business models of certain obliged entities like PISPs or electronic money issuers. We heard the concerns of the COM and some Member States during the CWP that 12 months might not be FATF compatible and that we can't leave it with AMLA to determine the appropriate deadline(s). With that in mind, we would favor not having a deadline written down in the regulation at all and leave it to the COM to define postponement deadlines in a delegated act

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			which would leave some room for maneuver for obliged entities to apply a risk-based approach. LT: (Comments): We believe that such lengthening of of the period to verify the identity of the customer and BO is unproportionate, thus we would favor to keep the 30 days period.
	(b) use sources of information to verify the identification data of natural or legal persons, with lower degree of reliability and independence;	This is to react to preference of MS, expressed bilaterally, to extend the set of SDD measures.	IT: (Comments): <u>We firmly disagree with the proposed addition.</u> We believe that the low degree of risk should not justify the use of less reliable identification and verification means. A proper identification and verification of the customer's identity is indeed one of the necessary preconditions to allow a correct assessment of the customer's risk level. EE: (Comments): EE Comment. In addition to sources we would also like to see that the use of electronic identification means of lower degree of assurance levels would be allowed. EL: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			We do not agree with this insertion. Misinterpretation or misuse of such a provision by some obliged entities may put at risk customer identification and verification measures which are the cornerstone of CDD. FR: (Comments): We propose deleting this sub-paragraph : no compatibility with FATF recommendation 10, inconsistency with the rest of the text and overlooks the many AML typologies that involve identity fraud. LV: (Comments): We also have some issues with the proposal to supplement Article 27, paragraph 1 with sub-paragraph (b). We believe that the FATF recommendations also do not provide for the possibility of using less reliable and less independent sources when verifying the identification data. DE: (Comments): We support the drafting proposals as far as they also ensure FATF-conformity. LT: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			It is questionable whether such provision would comply with FATF recommendation 10.
	(c) for the purposes of verifying the information on the beneficial owner(s), only consult the central registers referred to in Article 10 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final];	To reflect answers to the questionnaire following WP 18.7.2022, where majority of MS supported the idea that obliged entities could rely only on BOR in low risk situations. Implementing this idea in the remit of SDD also reacts to preference of MS, expressed bilaterally, to extend the set of SDD measures. <u>However, the Presidency would like to attract attention of MS to the fact that EC has concerns that lack of multi prong approach, from the perspective of FATF</u>	NL: (Comments): We agree in principle with allowing the OE to rely on BO-register to a greater extent in case of low risk. However, we believe the OE should still perform a ‘sanity check’ on the information. This would also be more in line with the multi-pronged approach. Text suggestion: for the purposes of verifying the information on the beneficial owner(s), rely on only consult the central registers referred to in Article 10 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final] insofar the obliged entity is reasonably satisfied that the information therein is correct and there are no grounds for suspicion; EE: (Comments): EE Comment. We generally agree with the concerns of the EC. The reliance only on the data in the register can be temporary. The OE must ask the BO information at least from the customer at some point. We also see this point problematic in the combination with the point

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
		<u>Recommendation 24, is not acceptable even in case of SDD.</u>	(a). Points (a) and (c) should foresee some additional mitigating measures. Alternative would be to make one point about the BO and leaving the point (a) only about the identification of the customer: “veirfying the beneficial owner can be postponed for up to x months or the period set out in regulatory technical standards under Article 22(1)(c) of the relationship being established if the central registers referred to in Article 10 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final] are consulted provided that the specific lower risk identified justified such postponement; EL: (Comments): Although we recognise the need to simplify requirements and reduce burden on obligated entities when the risk is evidently low, we share EC concerns and suggest to allow AMLA to assess the different options and define the SDD measure applicable as already mandated under Art.22 par.1(b) and (c) LV: (Comments): We do not support PCY proposal because it creates non-compliance with FATF recommendations as well as the impossibility of ensuring the implementation of sanctions. LT:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			(Comments): It is not clear what does “consult” means. It is also worth noting that low risk will be assessed by OE themselves, so will depend on OE consciousness. MT: (Comments): As previously stated, currently MT has doubts on how reliable such a register is - the fact that obliged entities are to report any discrepancies that they may encounter from data within the register sheds light on the very fact that the information provided cannot be fully relied upon. Should however measures be put in place to ensure that the information is sufficiently reliable, MT could consider reliance on the BOR for verification purposes in low-risk scenarios. This said, MT still has certain concerns even with this option, as its application in practice depends on factors such as the correct interpretation of what is to amount to a low-risk scenario, and the correct identification of such by

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			the OE. Additionally, one has to also consider that the risk might change throughout a business relationship.
(a) reduce the frequency of customer identification updates;	(ad) reduce the frequency of customer identification updates		
(b) reduce the amount of information collected to identify the purpose and intended nature of the business relationship, or inferring it from the type of transactions or business relationship established ;	(be) reduce the amount of information collected to identify the purpose and intended nature of the business relationship, or inferring it from the type of transactions or business relationship established ;		
(c) reduce the frequency or degree of scrutiny of	(ef) reduce the frequency or degree of scrutiny of		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
transactions carried out by the customer;	transactions carried out by the customer;		
(d) apply any other relevant simplified due diligence measure identified by AMLA pursuant to Article 22.	(~~eg~~) apply any other relevant simplified due diligence measure identified by AMLA pursuant to Article 22.		MT: (Comments): MT proposes to include also the reduction in the amount of information (even though Article 18 applies ‘with the exception of cases of lower risk to which measures under Section 3 apply’) or the use of different identity elements, for identification and verification purposes. Providing such an option is important to ensure that lower risk business propositions are not made non-feasible by the cost of the CDD measures required under Article 18. For example, at a national level, the standard set of personal details that is to be obtained for customers that are natural persons are the following: (a) official full name; (b) place and date of birth; (c) permanent residential address; (d) identity reference number, where available; and (e) nationality. However, in low-risk situations, obliged entities will be considered to

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			have satisfied the identification requirements by obtaining the following details: (a) official full name; (b) date of birth; and (c) permanent residential address. These are considered to be the minimum personal details required to identify a natural person.
The measures referred to in the first subparagraph shall be proportionate to the nature and size of the business and to the specific elements of lower risk identified. However, obliged entities shall carry out sufficient monitoring of the transactions and business relationship to enable the detection of unusual or suspicious transactions.	The measures referred to in the first subparagraph shall be proportionate to the nature and size of the business and to the specific elements of lower risk identified. However, obliged entities shall carry out sufficient monitoring of the transactions and business relationship to enable the detection of unusual or suspicious transactions.		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
2. Obligated entities shall ensure that the internal procedures established pursuant to Article 7 contain the specific measures of simplified verification that shall be taken in relation to the different types of customers that present a lower risk. Obligated entities shall document decisions to take into account additional factors of lower risk.	2. Obligated entities shall ensure that the internal procedures established pursuant to Article 7 contain the specific measures of simplified verification that shall be taken in relation to the different types of customers that present a lower risk. Obligated entities shall document decisions to take into account additional factors of lower risk.		BE: (Comments): NBB: Paragraphs (2) and (3) deal with internal procedures and may be redundant. Mixing both in one paragraph could be more appropriate.
3. For the purpose of applying simplified due diligence measures referred to in paragraph 1, point (a), obliged entities shall adopt	3. For the purpose of applying simplified due diligence measures referred to in paragraph 1, point (a), obliged entities shall adopt		BE: (Comments): NBB: Paragraphs (2) and (3) deal with internal procedures and may be redundant. Mixing both in one paragraph could be more appropriate.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
risk management procedures with respect to the conditions under which they can provide services or perform transactions for a customer prior to the verification taking place, including by limiting the amount, number or types of transactions that can be performed or by monitoring transactions to ensure that they are in line with the expected norms for the business relationship at hand.	risk management procedures with respect to the conditions under which they can provide services or perform transactions for a customer prior to the verification taking place, including by limiting the amount, number or types of transactions that can be performed or by monitoring transactions to ensure that they are in line with the expected norms for the business relationship at hand.		
4. Obligated entities shall verify on a regular basis that the conditions for the application of simplified due	4. Obligated entities shall verify on a regular basis that the conditions for the application of simplified due		HR: (Comments): HR The frequency of verification should be further prescribed at the EU level. IT: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
diligence continue to exist. The frequency of such verifications shall be commensurate to the nature and size of the business and the risks posed by the specific relationship.	diligence continue to exist. The frequency of such verifications shall be commensurate to the nature and size of the business and the risks posed by the specific relationship.		We deem that the possibility for MSs to introduce additional enhanced due diligence measures potentially hampers the full harmonization of AML/CFT requirements. We are therefore of the opinion that MS should not have the possibility to adopt additional measures
5. Obligated entities shall refrain from applying simplified due diligence measures in any of the following situations:	5. Obligated entities shall refrain from applying simplified due diligence measures in any of the following situations:		
(a) the obliged entities have doubts as to the veracity of the information provided by the customer or the beneficial owner at the stage of identification, or	(a) the obliged entities have doubts as to the veracity of the information provided by the customer or the beneficial owner at the stage of identification, or		

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they detect inconsistencies regarding that information;	they detect inconsistencies regarding that information;		
(b) the factors indicating a lower risk are no longer present;	(b) the factors indicating a lower risk are no longer present;		
(c) the monitoring of the customer's transactions and the information collected in the context of the business relationship exclude a lower risk scenario;	(c) the monitoring of the customer's transactions and the information collected in the context of the business relationship exclude a lower risk scenario;		
(d) there is a suspicion of money laundering or terrorist financing.	(d) there is a suspicion of money laundering or terrorist financing.		
SECTION 4	SECTION 4		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Enhanced customer due diligence	Enhanced customer due diligence		
Article 28	Article 28		
Scope of application of enhanced customer due diligence measures	Scope of application of enhanced customer due diligence measures		
1. In the cases referred to in Articles 23, 24, 25 and 30 to 36, as well as in other cases of higher risk that are identified by obliged entities pursuant to Article 16(2), second subparagraph ('cases of higher risk'), obliged entities shall apply enhanced customer due diligence measures to manage and	1. In the cases referred to in Articles 23, 24, 25 and 30 to 36, as well as in other cases of higher risk that are identified by obliged entities pursuant to Article 16(2), second subparagraph ('cases of higher risk'), obliged entities shall apply enhanced customer due diligence measures to manage and		BE: (Comments): <u>NBB drafting suggestions:</u> 1. In the cases referred to in Articles 23, 24, 25 and 30 to 36, as well as in other cases of higher risk <u>of money laundering and terrorist financing</u> that are identified by obliged entities pursuant to Article 16(2), second subparagraph ('cases of higher risk'), obliged entities shall apply enhanced customer due diligence measures to manage and mitigate those risks appropriately. DE: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
mitigate those risks appropriately.	mitigate those risks appropriately.		
2. Obligated entities shall examine the origin and destination of funds involved in, and the purpose of, all transactions that fulfil at least one of the following conditions:	2. Obligated entities shall examine the origin and destination of funds involved in, and the purpose of, all transactions that fulfil at least one of the following conditions:		NL: (Comments): 2. Obligated entities shall examine the origin source and destination of funds involved in, and the purpose of, all transactions that fulfil at least one of the following conditions: BE: (Comments): NBB: Redundancy with Article 20 : pursuant the proposal, understanding the purpose of a transaction, and origin (“source”) and destination of funds is already a measure of general CDD. See in this regard our comment under Article 20. FR: (Comments): Structurally, including this provision here is unclear. Indeed, in our understanding, this provision is independent from other obligations of enhanced due diligence. The situations described in paragraph 2 can be encountered also in the framework of normal monitoring of the business relationship. We are of the opinion that it would be much clearer either as part of Article 22 (ongoing

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			monitoring) or as a stand-alone article before Article 31.
(a) the transactions are of a complex nature;	(a) the transactions are of a complex nature;		
(b) the transactions are unusually large;	(b) the transactions are unusually large;		DE: (Comments): Please consider clarifying by what benchmark an OE is to assess whether a transaction is “unusually large” or – see (c) – “conducted in an “unusual pattern” (the relevant clients’ usual activities?/the OE’s usual activities/market practices as a whole?). Alternatively an AMLA mandate could be considered. Hitherto, national legislators and/or authorities have been able to clarify and/or give OEs some guidance. This possibility is eliminated with the present Regulation.
(c) the transactions are conducted in an unusual pattern;	(c) the transactions are conducted in an unusual pattern;		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(d) the transactions do not have an apparent economic or lawful purpose.	(d) the transactions do not have an apparent economic or lawful purpose.		DE: (Comments): Please consider whether wording should not be “does not have an apparent lawful economic purpose”. To our understanding, any transaction whose economic purpose is not both apparent AND lawful would merit intensified scrutiny.
3. With the exception of the cases covered by Section 2 of this Chapter, when assessing the risks of money laundering and terrorist financing posed by a business relationship or occasional transaction, obliged entities shall take into account at least the factors of potential higher risk set out in Annex III and	3. With the exception of the cases covered by Section 2 of this Chapter, when assessing the risks of money laundering and terrorist financing posed by a business relationship or occasional transaction, obliged entities shall take into account at least the factors of potential higher risk set out in Annex III and		BE: (Comments): NBB: may be redundant with Article 16(2) FR: (Comments): In addition to factors of potential higher risks listed in annex 3 and AMLA guidelines, obliged entities should also take into account notifications of higher risk issued by the FIU. FIUs are able to issue targeted alerts to obliged entities, calling for them to apply enhanced due diligence measures to specific typologies or persons. Indeed, in emergency situations, such as, recently, the war in Ukraine, the power to alert obliged entities on specific persons, transactions or typologies is invaluable. FIUs should be able

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
the guidelines adopted by AMLA pursuant to Article 26.	the guidelines adopted by AMLA pursuant to Article 26.		to issue such alerts directly and in a fluid manner. <i>3. With the exception of the cases covered by Section 2 of this Chapter, when assessing the risks of money laundering and terrorist financing posed by a business relationship or occasional transaction, obliged entities shall take into account at least the factors of potential higher risk set out in Annex III, and the guidelines adopted by AMLA pursuant to Article 26, and notifications of higher risk issued by the FIU in which the obliged entity is established.</i>
4. With the exception of the cases covered by Section 2 of this Chapter, in cases of higher risk, obliged entities may apply any of the following enhanced customer due diligence measures, proportionate to the higher risks identified:	4. With the exception of the cases covered by Section 2 of this Chapter, in cases of higher risk, obliged entities may apply any of the following enhanced customer due diligence measures, proportionate to the higher risks identified:		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(a) obtain additional information on the customer and the beneficial owner(s);	(a) obtain additional information on the customer and the beneficial owner(s);		
(b) obtain additional information on the intended nature of the business relationship;	(b) obtain additional information on the intended nature of the business relationship;		
(c) obtain additional information on the source of funds, and source of wealth of the customer and of the beneficial owner(s);	(c) obtain additional information on the source of funds, and source of wealth of the customer and of the beneficial owner(s);		
(d) obtain information on the reasons for the intended or performed transactions	(d) obtain information on the reasons for the intended or performed transactions		BE: (Comments): NBB: the words “and their consistency with the business relationship” need to be clarified

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
and their consistency with the business relationship;	and their consistency with the business relationship;		
(e) obtain the approval of senior management for establishing or continuing the business relationship;	(e) obtain the approval of senior management for establishing or continuing the business relationship;		
(f) conduct enhanced monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination;	(f) conduct enhanced monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination;		
(g) require the first payment to be carried out through an account in the	(g) require the first payment to be carried out through an account in the		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
customer's name with a credit institution subject to customer due diligence standards that are not less robust than those laid down in this Regulation.	customer's name with a credit institution subject to customer due diligence standards that are not less robust than those laid down in this Regulation.		
5. With the exception of the cases covered by Section 2 of this Chapter, where Member States identify pursuant to Article 8 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> cases of higher risk, they may require obliged entities to apply enhanced due diligence measures and,	5. With the exception of the cases covered by Section 2 of this Chapter, where Member States identify pursuant to Article 8 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> cases of higher risk, they may require obliged entities to apply enhanced due diligence measures and,		NL: (Comments): This is an important issue given our national context, and relates to our comment on the definition of trust or company service provider. In our view the term 'cases' is unclear, as it implies that this can only be applied to individual cases (such as certain clients), rather than an entire sector or type of OE. In NL we have stricter requirements for <i>all</i> TCSPs, which have to apply stricter CDD for <i>all</i> clients. This should remain possible as TCPSs are considered a high risk obliged entity on the basis of the NL NRA. We have provided a text suggestion. Suggestion: 5. With the exception of the cases covered by Section 2 of this Chapter, where Member States identify risks pursuant to Article 8 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final] cases-of-higher-risk; they may require obliged entities to apply enhanced due diligence measures and, where appropriate, specify those measures, Member States shall notify to the Commission and AMLA the enhanced due diligence

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
where appropriate, specify those measures. Member States shall notify to the Commission and AMLA the enhanced due diligence requirements imposed upon obliged entities established in their territory within one month of their adoption, accompanied by a justification of the money laundering and terrorist financing risks underpinning such decision.	where appropriate, specify those measures. Member States shall notify to the Commission and AMLA the enhanced due diligence requirements imposed upon obliged entities established in their territory within one month of their adoption, accompanied by a justification of the money laundering and terrorist financing risks underpinning such decision.		requirements imposed upon obliged entities established in their territory within one month of their adoption, accompanied by a justification of the money laundering and terrorist financing risks underpinning such decision.
Where the risks identified by the Member States pursuant to the first subparagraph are likely to affect the financial system of the Union, AMLA	Where the risks identified by the Member States pursuant to the first subparagraph are likely to affect the financial system of the Union, AMLA		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
shall, upon a request from the Commission or of its own initiative, consider updating the guidelines adopted pursuant to Article 26.	shall, upon a request from the Commission or of its own initiative, consider updating the guidelines adopted pursuant to Article 26.		
6. Enhanced customer due diligence measures shall not be invoked automatically with respect to branches or subsidiaries of obliged entities established in the Union which are located third countries referred to in Articles 23, 24 and 25 where those branches or subsidiaries fully comply with the group-wide policies,	6. Enhanced customer due diligence measures shall not be invoked automatically with respect to branches or subsidiaries of obliged entities established in the Union which are located third countries referred to in Articles 23, 24 and 25 where those branches or subsidiaries fully comply with the group-wide policies,		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
controls and procedures in accordance with Article 14.	controls and procedures in accordance with Article 14.		
<i>Article 29</i>	<i>Article 29</i>		
Countermeasures to mitigate ML/TF threats from outside the Union	Countermeasures to mitigate ML/TF threats from outside the Union		
For the purposes of Articles 23 and 25, the Commission may choose from among the following countermeasures:	For the purposes of Articles 23 and 25, the Commission may choose from among the following countermeasures:		BE: (Comments): <u>NBB drafting suggestion:</u> For the purposes of Articles 23(5) and 25(5), the Commission may choose from among the following countermeasures:
(a) countermeasures that obliged entities are to apply to persons and legal entities involving high-risk third countries and, where	(a) countermeasures that obliged entities are to apply to persons and legal entities involving high-risk third countries and, where		NL: (Comments): How broad is the term “involving” to be understood?

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
relevant, other countries posing a threat to the Union's financial system consisting in:	relevant, other countries posing a threat to the Union's financial system consisting in:		
(i) the application of additional elements of enhanced due diligence;	(i) the application of additional elements of enhanced due diligence;		
(ii) the introduction of enhanced relevant reporting mechanisms or systematic reporting of financial transactions;	(ii) the introduction of enhanced relevant reporting mechanisms or systematic reporting of financial transactions;		
(iii) the limitation of business relationships or transactions with natural persons or legal entities from those third countries;	(iii) the limitation of business relationships or transactions with natural persons or legal entities from those third countries;		BE: (Comments): NBB: the word "from" is too vague

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(b) countermeasures that Member States are to apply with regard to high-risk third countries and, where relevant, other countries posing a threat to the Union's financial system consisting in:	(b) countermeasures that Member States are to apply with regard to high-risk third countries and, where relevant, other countries posing a threat to the Union's financial system consisting in:		EE: (Comments): EE Comment. Countermeasures to be demanded by the Member States would typically need to have a legal basis. This legal basis under this directly applicable regulation seems too vague. The possibility to apply countermeasures should then be inserted into the AMLD, so MS can apply this into domestic law, or be more specifically worded here, so legal clarity is ensured.
(i) refusing the establishment of subsidiaries or branches or representative offices of obliged entities from the country concerned, or otherwise taking into account the fact that the relevant obliged entity is	(i) refusing the establishment of subsidiaries or branches or representative offices of obliged entities from the country concerned, or otherwise taking into account the fact that the relevant obliged entity is		BE: (Comments): NBB: "or otherwise taking into account..." is too vague. Need of some examples to illustrate how it can happen.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
from a third country that does not have adequate AML/CFT regimes;	from a third country that does not have adequate AML/CFT regimes;		
(ii) prohibiting obliged entities from establishing branches or representative offices of obliged entities in the third country concerned, or otherwise taking into account the fact that the relevant branch or representative office would be in a third country that does not have adequate AML/CFT regimes;	(ii) prohibiting obliged entities from establishing branches or representative offices of obliged entities in the third country concerned, or otherwise taking into account the fact that the relevant branch or representative office would be in a third country that does not have adequate AML/CFT regimes;		
(iii) requiring increased supervisory examination or increased external audit	(iii) requiring increased supervisory examination or increased external audit		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
requirements for branches and subsidiaries of obliged entities located in the third country concerned;	requirements for branches and subsidiaries of obliged entities located in the third country concerned;		
(iv) requiring increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in the third country concerned;	(iv) requiring increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in the third country concerned;		
(v) requiring credit and financial institutions to review and amend, or if necessary terminate, correspondent relationships with respondent institutions	(v) requiring credit and financial institutions to review and amend, or if necessary terminate, correspondent relationships with respondent institutions		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
in the third country concerned.	in the third country concerned.		
<i>Article 30</i>	<i>Article 30</i>		
Specific enhanced due diligence measures for cross-border correspondent relationships	Specific enhanced due diligence measures for cross-border correspondent relationships		
With respect to cross-border correspondent relationships, including relationships established for securities transactions or fund transfers, involving the execution of payments with a third-country respondent institution, in addition to the customer due diligence	With respect to cross-border correspondent relationships, including relationships established for securities transactions or fund transfers, involving the execution of payments with a third-country respondent institution, in addition to the customer due diligence		NL: (Comments): How broad is the term “involving” to be understood? BE: (Comments): NBB: In order to achieve fully compliance with FATF recommendation 13, we suggest to extend the provisions of Article 30 to all cross-border correspondent relationships, irrespective of the respondent institution being established in the European Union or a third country. ➔ <u>Drafting suggestion:</u> “With respect to cross-border correspondent relationships, including relationships established

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
measures laid down in Article 16, credit institutions and financial institutions shall be required, when entering into a business relationship, to:	measures laid down in Article 16, credit institutions and financial institutions shall be required, when entering into a business relationship, to:		for securities transactions or fund transfers, involving the execution of payments with a ~~third-country~~ respondent institution, in addition to the customer due diligence measures laid down in Article 16, credit institutions and financial institutions shall be required, when entering into a business relationship, ~~to~~.” However, if we want to keep a European specificity, it could be possible by reintroducing the risk-based approach with regard to correspondent relationships, by providing that in intra-European situations, financial institutions have to apply EDD measures similar to those they must apply to correspondent relationships involving a third country, when the risks presented are similar. This is being said without prejudice to the results of the actions taken by the EU Commission, and which we support, aiming the recognition by the FATF that the EEA (or the EU) is a single jurisdiction for the assessment of R13, but taking into account that a result of these actions cannot be guaranteed.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(a) gather sufficient information about the respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision;	(a) gather sufficient information about the respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision;		
(b) assess the respondent institution's AML/CFT controls;	(b) assess the respondent institution's AML/CFT controls;		
(c) obtain approval from senior management before establishing new correspondent relationships;	(c) obtain approval from senior management before establishing new correspondent relationships;		

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Replies from: HR CY SK SI HU NL IT EE AT BE SE EL FR ES FI LV IE DK BG DE LT MT

Updated: 08/11/2022 16:19

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(d) document the respective responsibilities of each institution;	(d) document the respective responsibilities of each institution;		
(e) with respect to payable-through accounts, be satisfied that the respondent institution has verified the identity of, and performed ongoing due diligence on, the customers having direct access to accounts of the correspondent institution, and that it is able to provide relevant customer due diligence data to the correspondent institution, upon request.	(e) with respect to payable-through accounts, be satisfied that the respondent institution has verified the identity of, and performed ongoing due diligence on, the customers having direct access to accounts of the correspondent institution, and that it is able to provide relevant customer due diligence data to the correspondent institution, upon request.		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Where credit institutions and financial institutions decide to terminate cross-border correspondent relationships for reasons relating to anti-money laundering and counter-terrorist financing policy, they shall document their decision.	Where credit institutions and financial institutions decide to terminate cross-border correspondent relationships for reasons relating to anti-money laundering and counter-terrorist financing policy, they shall document their decision.		
	Article 30b	To reflect TFR.	MT: (Comments): MT questions the need to include Article 30b when this simply seems to mirror Article 19(b) and Article 19(a) in the recast TFR. While this article makes reference to AMLA, as opposed to the EBA as under the recast TFR, this seems to be simply a practical issue tied to the different timeframes for coming into force of the two instruments.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	Specific enhanced due diligence measures for cross-border correspondent relationships for crypto-asset service providers		DE: (Comments): We support the alignment with TFR.
	1. By way of derogation from Article 30, with respect to cross-border correspondent relationships involving the execution of crypto-asset services as defined in Article XX of Regulation [MiCA] with a respondent entity not established in the EU and providing similar services, including		AT: (Comments): We will have to ensure conformity with R. 15. In this respect, we need to reflect on the FATF's requirement to adopt similar rules for domestic CASP correspondent relationships (para. 168 of the Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers). It seems to us that this requirement would mean that we have to delete the words "cross-border".

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	transfers of crypto-assets, crypto-asset service providers shall, in addition to the customer due diligence measures laid down in article 15, when entering into a business relationship:		
	(a) determine if the respondent entity is licensed or registered;		
	(b) gather sufficient information about the respondent entity to understand fully the nature of the respondent's business and to determine from publicly available		LT: (Comments): It is not clear what scope of supervision is meant here, only AML?

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	information the reputation of the entity and the quality of supervision;		
	(c) assess the respondent entity AML/CFT controls;		
	(d) obtain approval from senior management before the establishment of the correspondent relationship;		
	(e) document the respective responsibilities of each party to the correspondent relationship;		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	(f) with respect to payable-through crypto-asset accounts, be satisfied that the respondent entity has verified the identity of, and performed ongoing due diligence on, the customers having direct access to accounts of the correspondent entity, and that it is able to provide relevant customer due diligence data to the correspondent entity, upon request.		
	Where crypto-asset service providers decide to terminate correspondent relationships for reasons		HR: (Comments): HR We suggest amendment of the text: <i>“Where crypto-asset service providers decide to terminate correspondent relationships for</i>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	relating to anti-money laundering and counter-terrorist financing policy, they shall document and record their decision.		reasons relating to anti-money laundering and counter-terrorist financing policy, they shall document and record their decision <u>and inform the supervisory authority in writing of the decision and the reasons therefor</u> ".
	Crypto-asset service providers shall update the due diligence information for the correspondent relationship on a regular basis or when new risks emerge in relation to the respondent entity.		
	2. Crypto-asset service providers shall take into account the information collected pursuant to the first paragraph in order to		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	determine, on a risk sensitive basis, the appropriate measures to be taken to mitigate the risks associated with the respondent entity.		
	3. AMLA shall issue guidelines to specify the criteria and elements that crypto-asset services providers shall take into account for conducting the assessment referred to in paragraph 1 and the risk mitigating measures referred to in paragraph 2, including the minimum action to be taken by crypto-asset service		FI: (Comments): TFR includes the same provision, only for EBA. Does this mean that there will be two, potentially different and conflicting guidelines on the same issue?

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	providers where the respondent entity is not registered or licensed.		
<i>Article 31</i>	<i>Article 31</i>		
Prohibition of correspondent relationships with shell banks	Prohibition of correspondent relationships with shell banks		
Credit institutions and financial institutions shall not enter into, or continue, a correspondent relationship with a shell bank. Credit institutions and financial institutions shall take appropriate measures to ensure that they do not engage in or continue	Credit institutions and financial institutions shall not enter into, or continue, a correspondent relationship with a shell bank. Credit institutions and financial institutions shall take appropriate measures to ensure that they do not engage in or continue		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
correspondent relationships with a credit institution or financial institution that is known to allow its accounts to be used by a shell bank.	correspondent relationships with a credit institution or financial institution that is known to allow its accounts to be used by a shell bank.		
	Article 31a	To reflect TFR.	MT: (Comments): MT questions the need to include Article 31a when this simply seems to mirror Article 19(b) and Article 19(a) in the recast TFR. While this article makes reference to AMLA, as opposed to the EBA as under the recast TFR, this seems to be simply a practical issue tied to the different timeframes for coming into force of the two instruments.
	Measures to mitigate risks in relation to transactions with a self-hosted address		EE: (Comments): EE Comment. We propose to add a following mitigative measure: “using an appropriate technical solution for the monitoring of the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			transactions in real time and risk analysis in respect of each transaction”. DE: (Comments): We support the alignment with TFR.
	1. Crypto-asset service providers shall identify and assess the risk of money laundering and financing of terrorism associated with transfers of crypto-assets directed to or originating from a self-hosted address. To that end, crypto-asset service providers shall have in place internal policies, procedures and controls.		
	Crypto-asset service providers shall apply		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	mitigating measures commensurate with the risks identified. Those mitigating measures shall include one or more of the following:		
	(a) taking risk-based measures to identify, and verify the identity of, the originator or beneficiary of a transfer made from or to a self-hosted address or beneficial owner of such originator or beneficiary, including through reliance on third parties;		EE: (Comments): EE Comment. It is not usual to mention the risk-based approach in the context of particular CDD measure as all the measures should be used risk-based. In this context it should be clearer if the regulation demands an effort from the CASP in every case, and as usually not stated clearly in the text of the regulation the level of sufficient effort is determined by the RBA
	(b) requiring additional information on the origin		HU: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	and destination of the crypto-assets;		What would this additional information be? Information written in Art. 14 of TFR? If so, it is proposed to include a reference to these provisions.
	(c) conducting enhanced ongoing monitoring of those transactions;		
	(d) any other measure to mitigate and manage the risks of money laundering and financing of terrorism as well as the risk of non-implementation and evasion of targeted financial sanctions and proliferation financing-		DE: (Comments): Is this drafting consistent with the drafting in Art. 7 para 1b AMLR on financial sanctions?

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	related targeted financial sanctions.		
	2. AMLA shall issue guidelines to specify the measures referred to in this Article, including the criteria and means for identification and verification of the identity of the originator or beneficiary of a transfer made from or to a self-hosted address, including through reliance on third parties, taking into account the latest technological developments;		IT: (Comments): Please consider that this competence overlaps with the competences already attributed to EBA under the TFR. It is important to clarify if this provision implicitly replace those under TFR. FI: (Comments): TFR includes the same provision on guidelines for EBA. Does this mean that there will be two potentially conflicting guidelines on the same issue?
<i>Article 32</i>	<i>Article 32</i>		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Specific provisions regarding politically exposed persons	Specific provisions regarding politically exposed persons		
1. In addition to the customer due diligence measures laid down in Article 16, obliged entities shall have in place appropriate risk management systems, including risk-based procedures, to determine whether the customer or the beneficial owner of the customer is a politically exposed person.	1. In addition to the customer due diligence measures laid down in Article 16, obliged entities shall have in place appropriate risk management systems, including risk-based procedures, to determine whether the customer or the beneficial owner of the customer is a politically exposed person.		BE: (Comments): <u>NBB drafting suggestion</u> as it is more a CDD measure than a question of internal procedures. <u>For this reason this requirement could be even more adequately be moved in Article 16(1), in a new point e):</u> “1. In addition to the customer due diligence measures laid down in Article 16, obliged entities shall ~~have in place appropriate risk management systems, including risk-based procedures, to~~ determine, on the basis of an in whether the customer or the beneficial owner of the customer is a politically exposed person.”
2. With respect to transactions or business relationships with politically	2. With respect to occasional transactions or business relationships with	To reflect reactions on PCY Amendments 30 June.	

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Replies from: HR CY SK SI HU NL IT EE AT BE SE EL FR ES FI LV IE DK BG DE LT MT

Updated: 08/11/2022 16:19

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
exposed persons, obliged entities shall apply the following measures:	politically exposed persons, obliged entities shall apply the following measures:		
(a) obtain senior management approval for establishing or continuing business relationships with politically exposed persons;	(a) obtain senior management approval for establishing or continuing business relationships with politically exposed persons;		BE: (Comments): NBB: in order to align the wording with the “chapeau”, this sentence should be enlarged to occasional transactions: “(a) obtain senior management approval for carrying out occasional transactions or establishing or continuing business relationships with politically exposed persons;”
(b) take adequate measures to establish the source of wealth and source of funds that are involved in business relationships or transactions with politically exposed persons;	(b) take adequate measures in accordance with a risk based approach to establish the source of wealth and source of funds that are involved in business relationships or transactions	To reflect reactions on PCY Amendments 30 June, as well as bilateral discussions.	NL: (Comments): Agreed. BE: (Comments): NBB: a word is added for the sake of clarity: “(b) take adequate measures in accordance with a risk based approach to establish the source of wealth and source of funds that are

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	with politically exposed persons;		involved in business relationships or occasional transactions with politically exposed persons;”
(c) conduct enhanced, ongoing monitoring of those business relationships.	(c) conduct enhanced, ongoing monitoring of those business relationships, in accordance with a risk based approach.	To reflect reactions on PCY Amendments 30 June, as well as bilateral discussions.	NL: (Comments): Agreed.
3. By [3 years from the date of entry into force of this Regulation], AMLA shall issue guidelines on the following matters:	3. By [3 years from the date of entry into force of this Regulation], AMLA shall issue guidelines on the following matters:		
(a) the criteria for the identification of persons falling under the definition of persons known to be a close associate;	(a) the criteria for the identification of persons falling under the definition of persons known to be a close associate;		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(b) the level of risk associated with a particular category of politically exposed person, their family members or persons known to be close associates, including guidance on how such risks are to be assessed after the person no longer holds a prominent public function for the purposes of Article 35.	(b) the level of risk associated with a particular category of politically exposed person, their family members or persons known to be close associates, including guidance on how such risks are to be assessed after the person no longer holds a prominent public function for the purposes of Article 35.		
<i>Article 33</i>	<i>Article 33</i>		BE: (Comments): NBB: these provisions should be transferred to AMLD6 since it concerns obligations of MS
List of prominent public functions	List of prominent public functions		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
1. Each Member State shall issue and keep up to date a list indicating the exact functions which, in accordance with national laws, regulations and administrative provisions, qualify as prominent public functions for the purposes of Article 2, point (25). Member States shall request each international organisation accredited on their territories to issue and keep up to date a list of prominent public functions at that international organisation for the purposes of Article 2, point (25).	1. Each Member State shall issue and keep up to date a list indicating the exact functions which, in accordance with national laws, regulations and administrative provisions, qualify as prominent public functions for the purposes of Article 2, point (25). Member States shall request each international organisation accredited on their territories to issue and keep up to date a list of prominent public functions at that international organisation for the purposes of Article 2, point (25).		NL: (Comments): <i>1. Each Member State shall issue and keep up to date a list indicating the exact functions which, in accordance with national laws, regulations and administrative provisions, qualify as prominent public functions for the purposes of Article 2, point (25). Member States shall request each international organisation accredited on their territories to issue and keep up to date a list of prominent public functions at that international organisation for the purposes of Article 2, point (25). These lists shall also include any function which may be entrusted to representatives of third countries and of international bodies accredited at Member State level. Member States shall notify those lists, as well as any change made to them, to the Commission and to AMLA.</i> We propose to delete the third sentence as the definition under article 2(25)(d) provides obliged entities sufficient information to determine whether someone is a politically exposed person

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
These lists shall also include any function which may be entrusted to representatives of third countries and of international bodies accredited at Member State level. Member States shall notify those lists, as well as any change made to them, to the Commission and to AMLA.	These lists shall also include any function which may be entrusted to representatives of third countries and of international bodies accredited at Member State level. Member States shall notify those lists, as well as any change made to them, to the Commission and to AMLA.		
			FR: (Comments): Like Germany, we are concerned that the scope of PEPs at the boards of local publicly-owned undertakings in France might be extremely large and hence hard to keep track of (+ it might act as a deterrent for many local elected officials who serve on the boards of those companies): we would be open to foreseeing in this article the possibility for Member States to apply restrictive criteria on the PEPs referred to in article 2 (25) (vii) upon notification and justification to the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Commission. Those restrictive criteria could for instance be based on turnover of headcounts. DE: (Comments): <u>Drafting suggestion.</u> Please see comments on definition of PeP for further explanations. 2. When issuing the list indicating the exact functions member states can include functions corresponding to prominent public functions not included in Article 2, point (25) that are considered equivalent to other functions listed in Article 2, point (25) in their Member State and require the application of the specific provisions of Article 32. Regarding the prominent public functions listed in Article 2, point (25) (vi) and (vii), Member States may apply restrictive criteria when indicating the exact functions in order to ensure that the indicated exact functions are equivalent to other functions listed in Article 2, point (25) (a) (i) to (v) and Article 2, point (25) (b) to (d).

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
2. The Commission shall draw up and keep up to date the list of the exact functions which qualify as prominent public functions at the level of the Union. That list shall also include any function which may be entrusted to representatives of third countries and of international bodies accredited at Union level.	2. The Commission shall draw up and keep up to date the list of the exact functions which qualify as prominent public functions at the level of the Union. That list shall also include any function which may be entrusted to representatives of third countries and of international bodies accredited at Union level.		
3. The Commission shall assemble, based on the lists provided for in paragraphs 1 and 2 of this Article, a single list of all prominent public functions for the purposes of Article 2,	3. The Commission shall assemble, based on the lists provided for in paragraphs 1 and 2 of this Article, a single list of all prominent public functions for the purposes of Article 2,		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
point (25). The Commission shall publish that single list shall in the <i>Official Journal of the European Union</i> . AMLA shall make the list public on its website.	point (25). The Commission shall publish that single list shall in the <i>Official Journal of the European Union</i> . AMLA shall make the list public on its website.		
<i>Article 34</i>	<i>Article 34</i>		
Politically exposed persons who are beneficiaries of insurance policies	Politically exposed persons who are beneficiaries of insurance policies		
Obligated entities shall take reasonable measures to determine whether the beneficiaries of a life or other investment-related insurance policy or, where relevant, the beneficial	Obligated entities shall take reasonable measures to determine whether the beneficiaries of a life or other investment-related insurance policy or, where relevant, the beneficial		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
owner of the beneficiary are politically exposed persons. Those measures shall be taken no later than at the time of the payout or at the time of the assignment, in whole or in part, of the policy. Where there are higher risks identified, in addition to applying the customer due diligence measures laid down in Article 16, obliged entities shall:	owner of the beneficiary are politically exposed persons. Those measures shall be taken no later than at the time of the payout or at the time of the assignment, in whole or in part, of the policy. Where there are higher risks identified, in addition to applying the customer due diligence measures laid down in Article 16, obliged entities shall:		
(a) inform senior management before payout of policy proceeds;	(a) inform senior management before payout of policy proceeds;		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(b) conduct enhanced scrutiny of the entire business relationship with the policyholder.	(b) conduct enhanced scrutiny of the entire business relationship with the policyholder.		
<i>Article 35</i>	<i>Article 35</i>		
Measures towards persons who cease to be politically exposed persons	Measures towards persons who cease to be politically exposed persons		
1. Where a politically exposed person is no longer entrusted with a prominent public function by the Union, a Member State, third country or an international organisation, obliged entities shall take into account the continuing risk posed by that	1. Where a politically exposed person is no longer entrusted with a prominent public function by the Union, a Member State, third country or an international organisation, obliged entities shall take into account the continuing risk posed by that	To reflect reactions on PCY Amendments 30 June.	NL: (Comments): Agreed.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
person in their assessment of money laundering and terrorist financing risks in accordance with Article 16.	person due to their former function in their assessment of money laundering and terrorist financing risks in accordance with Article 16.		
2. Obligated entities shall apply one or more of the measures referred to in Article 28(4) to mitigate the risks posed by the business relationship, until such time as that person is deemed to pose no further risk, but in any case for not less than 12 months following the time when the individual is no longer entrusted with a prominent public function.	2. Obligated entities shall apply one or more of the measures referred to in Article 28(4) to mitigate the risks posed by the business relationship politically exposed person , until such time as that person is deemed to pose no further risk due to their former function , but in any case for not less than 12 months following the time when the individual is no longer	To reflect reactions on PCY Amendments 30 June, as well as bilateral discussions.	NL: (Comments): Agreed.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	entrusted with a prominent public function.		
3. The obligation referred to in paragraph 2 shall apply accordingly where an obliged entity enters into a business relationship with a person who in the past was entrusted with a prominent public function by the Union, a Member State, third country or an international organisation.	3. The obligation referred to in paragraph 2 shall apply accordingly where an obliged entity enters into a business relationship with a person who in the past was entrusted with a prominent public function by the Union, a Member State, third country or an international organisation.		BE: (Comments): NBB: for the sake of consistency this requirement has to be enlarged to occasional transactions: “3. The obligation referred to in paragraph 2 shall apply accordingly where an obliged entity <u>carries out an occasional transaction or</u> enters into a business relationship with a person who in the past was entrusted with a prominent public function by the Union, a Member State, third country or an international organisation.”
<i>Article 36</i>	<i>Article 36</i>		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Family members and close associates of politically exposed persons	Family members and close associates of politically exposed persons		
The measures referred to in Articles 32, 34 and 35 shall also apply to family members or persons known to be close associates of politically exposed persons.	The measures referred to in Articles 32, 34 and 35 shall also apply to family members or persons known to be close associates of politically exposed persons.		
SECTION 5	SECTION 5		
Specific customer due diligence provisions	Specific customer due diligence provisions		
<i>Article 37</i>	<i>Article 37</i>		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Specifications for the life and other investment-related insurance sector	Specifications for the life and other investment-related insurance sector		
For life or other investment-related insurance business, in addition to the customer due diligence measures required for the customer and the beneficial owner, obliged entities shall conduct the following customer due diligence measures on the beneficiaries of life insurance and other investment-related insurance policies, as soon as the beneficiaries are identified or designated:	For life or other investment-related insurance business, in addition to the customer due diligence measures required for the customer and the beneficial owner, obliged entities shall conduct the following customer due diligence measures on the beneficiaries of life insurance and other investment-related insurance policies, as soon as the beneficiaries are identified or designated:		

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

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

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
SECTION 6	SECTION 6		
Performance by third parties	Performance by third parties		BG: (Comments): The “Performance by third parties” section should be moved back to the Directive, or alternatively, it can remain in the Regulation, if MS have the power to determine: 1. the types of obliged entities which can rely on third parties and the types of obliged entities which can be relied on; 2. for which CDD elements (measures) can obliged rely on a third party. This would provide MS with more flexibility to mitigate emerging risks.
Article 38	Article 38		
General provisions relating to reliance on other obliged entities	General provisions relating to reliance on other obliged entities		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
1. Obligated entities may rely on other obliged entities, whether situated in a Member State or in a third country, to meet the customer due diligence requirements laid down in Article 16(1), points (a), (b) and (c), provided that:	1. Obligated entities may rely on other obliged entities, whether situated in a Member State or in a third country, to meet the customer due diligence requirements laid down in Article 16(1), points (a), (b) and (c), provided that:		BE: (Comments): NBB: We understand that this provision intends to regulate the case of the reliance on a “business introducer” where an obliged entity (A) receives the results of the CDD measures that have been applied by another obliged entity (B) consistent with the latter's CDD internal procedures (not those of (A), and the conditions under which (A) is allowed to consider that he fulfils his own CDD obligations by relying on the information, documents and data transmitted by (B). This is different from the case where the OE (A) relies on a third party (e.g. an agent) for applying its own CDD internal procedures. For clarifying this, <u>we suggest the following rewording</u> : “1. Obligated entities may rely on <u>the customer due diligence measures applied by</u> other obliged entities, whether situated in a Member State or in a third country, to meet the customer due diligence requirements laid down in Article 16(1), points (a), (b) and (c), provided that:” ES: (Comments): As was set out in article 25 and 26 of AMLD5 we would suggest including the member organisations, or federations of obliged entities, among those on which obliged entities may rely on to meet the CDD requirements. “Obligated entities may rely on other obliged entities, <u>the member organisations or</u>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<u><i>federations of those obliged entities, whether situated in a Member State...</i></u> BG: (Comments): Member States may permit obliged entities to rely on other obliged entities, whether situated in a Member State or in a third country, to meet the customer due diligence requirements laid down in Article 16(1), points (a), (b) and (c). Where obliged entities are permitted to rely on other obliged entities, the following should be ensured: DE: (Comments): We would welcome a clarification that Article 38 would also cover cases of “KYC-recycling”, ie. cases where an OE relies on information obtained and verified by another OE on an earlier occasion. Time limits on the recyclability of KYC data may be helpful in this context.
(a) the other obliged entities apply customer due diligence requirements and record-keeping requirements	(a) the other obliged entities apply customer due diligence requirements and record-keeping requirements		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
laid down in this Regulation, or equivalent when the other obliged entities are established or reside in a third country;	laid down in this Regulation, or equivalent when the other obliged entities are established or reside in a third country;		
(b) compliance with AML/CFT requirements by the other obliged entities is supervised in a manner consistent with Chapter IV of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> .	(b) compliance with AML/CFT requirements by the other obliged entities is supervised in a manner consistent with Chapter IV of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> .		
The ultimate responsibility for meeting the customer due diligence requirements shall	The ultimate responsibility for meeting the customer due diligence requirements shall		BE: (Comments): Idem as above:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
remain with the obliged entity which relies on another obliged entity.	remain with the obliged entity which relies on another obliged entity.		“The ultimate responsibility for meeting the customer due diligence requirements shall remain with the obliged entity which relies on <u>the customer due diligence measures applied by</u> another obliged entity.”
2. When deciding to rely on other obliged entities situated in third countries, obliged entities shall take into consideration the geographical risk factors listed in Annexes II and III and any relevant information or guidance provided by the Commission, or by AMLA or other competent authorities.	2. When deciding to rely on other obliged entities situated in third countries, obliged entities shall take into consideration the geographical risk factors listed in Annexes II and III and any relevant information or guidance provided by the Commission, or by AMLA or other competent authorities.		BE: (Comments): Idem as above: “2. When deciding to rely on <u>the customer due diligence measures applied by</u> other obliged entities situated in third countries, obliged entities shall take into consideration the geographical risk factors listed in Annexes II and III and any relevant information or guidance provided by the Commission, or by AMLA or other competent authorities.”

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
3. In the case of obliged entities that are part of a group, compliance with the requirements of this Article and with Article 39 may be ensured through group-wide policies, controls and procedures provided that all the following conditions are met:	3. In the case of obliged entities that are part of a group, compliance with the requirements of this Article and with Article 39 may be ensured through group-wide policies, controls and procedures provided that all the following conditions are met:		
(a) the obliged entity relies on information provided solely by an obliged entity that is part of the same group;	(a) the obliged entity relies on information provided solely by an obliged entity that is part of the same group;		BE: (Comments): Idem as above: “(a) the obliged entity relies on information, <u>documents and data</u> provided solely by an obliged entity that is part of the same group;”
(b) the group applies AML/CFT policies and procedures, customer due	(b) the group applies AML/CFT policies and procedures, customer due		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
diligence measures and rules on record-keeping that are fully in compliance with this Regulation, or with equivalent rules in third countries;	diligence measures and rules on record-keeping that are fully in compliance with this Regulation, or with equivalent rules in third countries;		
(c) the effective implementation of the requirements referred to in point (b) is supervised at group level by the supervisory authority of the home Member State in accordance with Chapter IV of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> or of the third country	(c) the effective implementation of the requirements referred to in point (b) is supervised at group level by the supervisory authority of the home Member State in accordance with Chapter IV of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> or of the third country		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
in accordance with the rules of that third country.	in accordance with the rules of that third country.		
4. Obligated entities shall not rely on obliged entities established in third countries identified pursuant to Section 2 of this Chapter. However, obliged entities established in the Union whose branches and subsidiaries are established in those third countries may rely on those branches and subsidiaries, where all the conditions set out in paragraph 3, points (a) to (c), are met.	4. Obligated entities shall not rely on obliged entities established in third countries identified pursuant to Section 2 of this Chapter. However, obliged entities established in the Union whose branches and subsidiaries are established in those third countries may rely on those branches and subsidiaries, where all the conditions set out in paragraph 3, points (a) to (c), are met.		BE: (Comments): Idem as above: “4. Obligated entities shall not rely on <u>the customer due diligence measures applied by</u> obliged entities established in third countries identified pursuant to Section 2 of this Chapter. However, obliged entities established in the Union whose branches and subsidiaries are established in those third countries may rely on those branches and subsidiaries, where all the conditions set out in paragraph 3, points (a) to (c), are met.”
<i>Article 39</i>	<i>Article 39</i>		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Process of reliance on another obliged entity	Process of reliance on another obliged entity		
1. Obligated entities shall obtain from the obliged entity relied upon all the necessary information concerning the customer due diligence requirements laid down in Article 16(1), first subparagraph points (a), (b) and (c), or the business being introduced.	1. Obligated entities shall obtain from the obliged entity relied upon all the necessary information concerning the customer due diligence requirements laid down in Article 16(1), first subparagraph points (a), (b) and (c), or the business being introduced.		DE: (Comments): We would welcome an explicit provision to the effect that the infringement of customers' data protection rights (cf. Art. 6 Regulation (EU) 2016/679) inherent in any information sharing in the course of a reliance is justified.
2. Obligated entities which rely on other obliged entities shall take all necessary steps to ensure that	2. Obligated entities which rely on other obliged entities shall take all necessary steps to ensure that		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
the obliged entity relied upon provides, upon request:	the obliged entity relied upon provides, upon request:		
(a) copies of the information collected to identify the customer;	(a) copies of the information collected to identify the customer;		DE: (Comments): Please reconsider whether lit (a) and (c) are necessary beside (b). Requiring copies of all collected information might also have a stifling effect on further digitisation.
(b) all supporting documents or trustworthy sources of information that were used to verify the identity of the client, and, where relevant, of the customer's beneficial owners or persons on whose behalf the customer acts, including data obtained through electronic identification	(b) all supporting documents or trustworthy sources of information that were used to verify the identity of the client, and, where relevant, of the customer's beneficial owners or persons on whose behalf the customer acts, including data obtained through electronic identification		

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
means and relevant trust services as set out in Regulation (EU) No 910/2014; and	means and relevant trust services as set out in Regulation (EU) No 910/2014; and		
(c) any information collected on the purpose and intended nature of the business relationship.	(c) any information collected on the purpose and intended nature of the business relationship.		
3. The information referred to in paragraphs 1 and 2 shall be provided by the obliged entity relied upon without delay and in any case within five working days.	3. The information referred to in paragraphs 1 and 2 shall be provided by the obliged entity relied upon without delay and in any case within five working days.		
4. The conditions for the transmission of the	4. The conditions for the transmission of the		DE: (Comments): <u>Drafting suggestion:</u>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
information and documents mentioned in paragraphs 1 and 2 shall be specified in a written agreement between the obliged entities.	information and documents mentioned in paragraphs 1 and 2 shall be specified in a written agreement between the obliged entities.		4. The conditions for the transmission of the relevant information and documents mentioned in paragraphs 1 and 2 shall be specified in a written agreement between the obliged entities.
5. Where the obliged entity relies on an obliged entity that is part of its group, the written agreement may be replaced by an internal procedure established at group level, provided that the conditions of Article 38(2) are met.	5. Where the obliged entity relies on an obliged entity that is part of its group, the written agreement may be replaced by an internal procedure established at group level, provided that the conditions of Article 38(2) are met.		
<i>Article 40</i>	~~<i>Article 40</i>~~	The article on outsourcing has been moved to Article 6a.	ES: (Comments): Unless they have a different scope, which we have not perceived, we suggest regulating outsourcing and performance by third parties in the same chapter, so as to reflect that although

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			both make reference to tasks performed by others, they are different figures DE: (Comments): We support the insertion of a new Article 6a for outsourcing.
Outsourcing	~~Outsourcing~~		
1. Obligated entities may outsource tasks deriving from requirements under this Regulation for the purpose of performing customer due diligence to an agent or external service provider, whether a natural or legal person, with the exception of natural or legal persons residing or established in third countries identified	~~1. — Obligated entities may outsource tasks deriving from requirements under this Regulation for the purpose of performing customer due diligence to an agent or external service provider, whether a natural or legal person, with the exception of natural or legal persons residing or established in third countries identified~~		DE: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
pursuant to Section 2 of this Chapter.	~~pursuant to Section 2 of this Chapter.~~		
The obliged entity shall remain fully liable for any action of agents or external service providers to which activities are outsourced.	~~The obliged entity shall remain fully liable for any action of agents or external service providers to which activities are outsourced.~~		
2. The tasks outsourced pursuant to paragraph 1 shall not be undertaken in such way as to impair materially the quality of the obliged entity's measures and procedures to comply with the requirements of this Regulation and of Regulation [please insert reference – proposal for a	~~2. — The tasks outsourced pursuant to paragraph 1 shall not be undertaken in such way as to impair materially the quality of the obliged entity's measures and procedures to comply with the requirements of this Regulation and of Regulation [please insert reference – proposal for a~~		

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
recast of Regulation (EU) 2015/847 - COM/2021/422 final]. The following tasks shall not be outsourced under any circumstances:	~~recast of Regulation (EU) 2015/847 - COM/2021/422 final]. The following tasks shall not be outsourced under any circumstances:~~		
(a) the approval of the obliged entity's risk assessment;	~~(a) the approval of the obliged entity's risk assessment;~~		
(b) the internal controls in place pursuant to Article 7;	~~(b) the internal controls in place pursuant to Article 7;~~		
(c) the drawing up and approval of the obliged entity's policies, controls and procedures to comply with the requirements of this Regulation;	~~(c) the drawing up and approval of the obliged entity's policies, controls and procedures to comply with the requirements of this Regulation;~~		

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(d) the attribution of a risk profile to a prospective client and the entering into a business relationship with that client;	~~(d) — the attribution of a risk profile to a prospective client and the entering into a business relationship with that client;~~		
(e) the identification of criteria for the detection of suspicious or unusual transactions and activities;	~~(e) — the identification of criteria for the detection of suspicious or unusual transactions and activities;~~		
(f) the reporting of suspicious activities or threshold-based declarations to the FIU pursuant to Article 50.	~~(f) — the reporting of suspicious activities or threshold-based declarations to the FIU pursuant to Article 50.~~		
3. Where an obliged entity outsources a task	~~3. — Where an obliged entity outsources a task~~		

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
pursuant to paragraph 1, it shall ensure that the agent or external service provider applies the measures and procedures adopted by the obliged entity. The conditions for the performance of such tasks shall be laid down in a written agreement between the obliged entity and the outsourced entity. The obliged entity shall perform regular controls to ascertain the effective implementation of such measures and procedures by the outsourced entity. The frequency of such controls shall be determined on the basis of the critical	~~pursuant to paragraph 1, it shall ensure that the agent or external service provider applies the measures and procedures adopted by the obliged entity. The conditions for the performance of such tasks shall be laid down in a written agreement between the obliged entity and the outsourced entity. The obliged entity shall perform regular controls to ascertain the effective implementation of such measures and procedures by the outsourced entity. The frequency of such controls shall be determined on the basis of the critical~~		

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
nature of the tasks outsourced.	~~nature of the tasks outsourced.~~		
4. Obligated entities shall ensure that outsourcing is not undertaken in such way as to impair materially the ability of the supervisory authorities to monitor and retrace the obliged entity's compliance with all of the requirements laid down in this Regulation.	~~4. — Obligated entities shall ensure that outsourcing is not undertaken in such way as to impair materially the ability of the supervisory authorities to monitor and retrace the obliged entity's compliance with all of the requirements laid down in this Regulation.~~		
<i>Article 41</i>	<i>Article 41</i>		
Guidelines on the performance by third parties	Guidelines on the performance by third parties		
<i>By [3 years after the entry into force of this</i>	<i>By [3 years after the entry into force of this</i>		ES: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
<i>Regulation</i>], AMLA shall issue guidelines addressed to obliged entities on:	<i>Regulation</i>], AMLA shall issue guidelines addressed to obliged entities on:		We suggest issuing the same guidelines to address outsourcing and performance by third parties, highlighting their similarities (both are performed by others) and differences
(a) the conditions which are acceptable for obliged entities to rely on information collected by another obliged entity, including in case of remote customer due diligence;	(a) the conditions which are acceptable for obliged entities to rely on information collected by another obliged entity, including in case of remote customer due diligence;		
(b) the establishment of outsourcing relationships in accordance with Article 40, their governance and procedures for monitoring the implementation of functions by the outsourced	~~(b) — the establishment of outsourcing relationships in accordance with Article 40, their governance and procedures for monitoring the implementation of functions by the outsourced~~	Technical change related to the transfer of Article 40.	

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Commission proposal	PCY amendment	PCY comment	MS comment/drafting
entities, and in particular those functions that are to be regarded as critical;	~~entities, and in particular those functions that are to be regarded as critical;~~		
(c) the roles and responsibility of each actor, whether in a situation of reliance on another obliged entity or of outsourcing;	~~(e)~~ (b) the roles and responsibility of each actor; ~~whether~~ in a situation of reliance on another obliged entity ~~or of outsourcing;~~	Technical change related to the transfer of Article 40. Technical change to align wording with Article 6a paragraph 5.	
(d) supervisory approaches to reliance on other obliged entities and outsourcing.	~~(d)~~ (c) supervisory approaches to reliance on other obliged entities ~~and outsourcing.~~	Technical change related to the transfer of Article 40.	
CHAPTER IV	CHAPTER IV		
BENEFICIAL OWNERSHIP TRANSPARENCY	BENEFICIAL OWNERSHIP TRANSPARENCY		BE: (Comments): We appreciate the Pcy work and efforts on this topic but in our view, instead of clarifying things, the proposed text is still making them

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			more complex and opacifies the notion of BO. Therefore, we insist again on the need to stick to the notion of control of a company as it has existed for decades in accounting Law, rather than modifying it for minimal or even negative added value. We therefore express <u>very serious reservations</u> about this Chapter, and refer to our previous written comments in this regard. We very much fear that the very high complexity introduced in the definition of UBOs will be counterproductive: the more that definition is complex, the less one can expect it will be correctly understood and applied, leading to qualifying as UBOs persons who are not in a position for directing the operations of the customer or, instead, to not qualifying as UBOs persons who effectively are in this position. We notice that some of the proposed new provisions are copied from the accounting Law. But placing them in another legal context, one risks seeing them interpreted differently than in the context of the accounting Law, increasing even more so the complexity for understanding the concept. Due to the above, we very much fear that the amendments brought to the concept of UBO will miss the goal of improving the fight against ML/TF and to effectively increase the harmonization within the EU. It is also worth noting that any change brought to the concept of UBO will not apply only to new

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			customers, but also to all existing customers. Such a change will consequently result in very huge upgrade work for all stakeholders. This can only be justified if there is a demonstrable added value for the change, what is not the case in our view. We thus very much insist to come back to the definition as currently provided by the AMLD4 and that is based on the notion of control as defined by the accounting Law.
<i>Article 42</i>	<i>Article 42</i>		
Identification of Beneficial Owners for corporate and other legal entities	Identification of Beneficial Owners for corporate and other legal entities		
1. In case of corporate entities, the beneficial owner(s) as defined in Article 2(22) shall be the natural person(s) who	1. In case of corporate entities, the beneficial owner(s) as defined in Article 2(22) shall be the natural person(s) who	Following the reactions of Member States, the aim is to clarify that the position of the beneficial owner in the case of corporations is based on	IT: (Comments): We still believe that the redrafting proposal of article 42, para 1 introduces an excessive complexity in the criteria for identifying BOs and should be more thoroughly considered and discussed.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
control(s), directly or indirectly, the corporate entity, either through an ownership interest or through control via other means.	own(s) or control(s), directly or indirectly, the corporate entity, either ~~through of~~ an ownership interest or through control via other means.	both ownership and control. Both concepts are separately defined.	EE: (Comments): EE Comment. We welcome the addition of ownership aspect in the section but we would like to see more strong prevalence of the ownership position compared to control by other means. We agree that the BO status is about the control over the legal person, transaction, legal arrangement etc. But on the other hand its also about the movement of funds as it is in the business a strong indicators of control and intrests. It is sometimes complicated to encompass what is meant by the control – is it control over day-to-day affairs, control over the actions of the entity, factual control, legal/”theoretical” possibility of control or ownership. The set of rights necessary for the beneficial ownership status are not clearly defined. If a legal person has to assess the BO status simultaneously though ownership structure and though control structure and reaches differing conclusions then it is not clear which one prevails. By making both controls simultaneously compulsory in all circumstances the correct answer to the question “who is BO?” becomes vague. In this context we would like to remind that one of the key aims to create the BO concept was to surpass the complex ownership structures. If the checks on the ownership structure do not get enough weight then it would

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			be easier for the legal entities to state that the senior managing officials are BOs (this is also for the OEs as it is possible based on the article 18 section 2 state that if BO can not be identified the senior managing officials can be identified instead. Information about the senior managing officials is a lot of the times publicly available anyways and the benefit of this exercise becomes questionable. Our position is that efforts should be made to increase the transparency of the ownership structure as a whole. The more data publicly available about the ownership, the easier it is to control the accuracy of BO information. If we look at the FATF standards, they put the control and BO on equal footing. The control in the context of ownership is a lot of the times understood as a control of 50%+1 voting rights, which almost always stems from the ownership. We support the transparency of both aspects – control and BO – and this can be achieved by multiple means. Disclosure of voting rights, regulating voting rights, publication of the information concerning board members, limiting the usage of services/structures that aimed at withholding information about the persons in control. In this context if the ownership and control are on equal footing the criteria of the BO status should be described in the AMLR more precisely that would lead to more clearer understanding

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			that the control functions assessed in the BO context are usually held by the owners not by the persons in the managing positions. BE: (Comments): For efficiency reasons, it is crucial in our view to only qualify as UBOs of a company those persons who effectively have a prominent position within this company, that allows these persons to direct the financial transactions of that company (potentially for ML/TF purpose). These persons can be, depending on the cases, 1. the persons who own a sufficient percentage of the shares of the company and who thus control it by virtue of their voting rights. As it is stated bellow by the presidency in its comments, this is the main way for controlling the company. It is always the case of shareholders owning the majority of shares and voting rights in that company, or 2. the persons who don't have that level of ownership, but who have other means to control the company, e.g. through a shareholders agreement, through statutory provisions that provide them with the right to appoint the majority of the senior managers of the company, etc., or 3. even those persons who are in a position in the practice to impose their view to the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			company, e.g. because of the wide dispersal of shareholders of that company and the repeated and systematic absenteeism of small shareholders at its general meetings. All these rules defining the control of companies are defined in the accounting Law and benefit from detailed interpretation within that legal framework. Taking this into consideration, we are of the view that the proposed amendments as regards the notion of UBO in the draft AMLR will obscure the concepts, instead of clarifying them. We thus very much insist to come back to the original wording proposed that appears to be much better. SE: (Comments): We do not oppose the changes. However, we think "...either through an ownership interest..." better captures the concept of "ownership interest". ES: (Comments): We do not see the reasons to delete "through". except for a linguistic issue that we are not aware of. DK: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			DK: We consider it important that it is very clear what is meant by own or control through an ownership interest and what is meant by control by other means. We find that own or control through an ownership interest concerns shares and voting rights. Control by other means relates to other matters such as those laid down in the company's articles of association; the right to appoint members of management etc. DE: (Comments): The proposed revision of the concept of "control via other means" introduces legal uncertainties and a large amount of bureaucracy for the concerned, and should therefore be reconsidered. The control means listed in subpara. 3 lit. a) to c) can be subject to frequent changes. The detection of relevant changes as well as their communication to the register creates considerable expenses for small and medium companies.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
For the purpose of this Article, ‘control through an ownership interest’ shall mean an ownership of 25% plus one of the shares or voting rights or other ownership interest in the corporate entity, including through bearer shareholdings, on every level of ownership.	1A. For the purpose of this Article, ‘control ~~through of~~ an ownership interest’ shall mean: ~~an ownership of 25% plus one of the shares or voting rights or other ownership interest in the corporate entity, including through bearer shareholdings, on every level of ownership.~~	Control of ownership interest means participation in the corporate entity. Ownership of a sufficiently large (more than half) share of the voting rights is also the most common mean of control. The means of ownership and control are intertwined in this respect.	NL: (Comments): The thresholds should be indicative. The wording would create a too technical approach. OE’s should apply a lower threshold in a specific case if it is necessary to capture the true BO’s . Text suggestion: “1A. For the purpose of this Article, indications of ‘control through of an ownership interest’ shall mean are:” EE: (Comments): EE Comment. Please see the comment above. We would like to see that the BO function is not only defined by legal terms that might have different meanings in different jurisdictions. To give an example, in Estonia there is no legal concept of ownership over another legal person, but there is a set of defined rights that the shareholder gains and that are similar to the rights of an owners in other jurisdictions. To overcome this problem the set of rights that the BO usually has should be named in the AMLR to increse the unifomrity of the application by the legal persons, OEs and jurisdictions SE: (Comments): See our comment above about “...either through an ownership interest...”. LV: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			On the determination of control we prefer the proposed wording "at least 25%" instead of "more than 25%". DK: (Comments): DK: We understand point a) as owning shares directly or indirectly. Point b) concerns directly or indirectly control through ownership interest. Paragraph 1B below concerns control by other means. We find that the wording of paragraph 1A should include both "own" and "control" through an ownership interest as in paragraph 1 above. DE: (Comments): We reserve further comments.
	a) ~~an~~ a direct or indirect ownership of 25% ~~plus one~~ or more of the shares or voting rights or other ownership interest in the	A 25% share of the corporation is already determinative of the beneficial owner's position, even if that share would not allow him or her to control the corporation.	NL: (Comments): We favour the 25%+1 threshold, and are not sure this would not be in line with the FATF - standards as the maximum threshold allowed is 25%. We see a threshold as meaning that anything <i>above</i> that threshold would be an indication of beneficial ownership. Thus the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	corporate entity, including through bearer shareholdings, ~~on every level of ownership~~ ,	The determination of the size of the indirect shareholding is subject to the special rule in subparagraph 2.	25%+1 in our view is in fact applying a 25% threshold. If we would depart from this method from the current AMLD we need to be absolutely sure of (a) the added value (b) that is indeed required by the FATF-standards. IT: (Comments): We believe that “ownership” should only refer to cases where natural person(s) directly or indirectly hold a minimum percentage of ownership interest in the legal person. Any residual and more substantial consideration should instead be considered under the concept of “control through other means”. This would also be more coherent with the presumptive nature of the former criteria, on the one hand, and the non-exhaustive and discretionary nature of the latter. In the light of this, we suggest to delete the reference to “voting rights” contained in article 42, para 1A which in any case partly overlaps with the reference to the “majority of voting rights” in para 1B, letter a0). ES: (Comments): For clarification: we could only accept this proposal if, after applying the multiplication rule described below, indirect control led to a percentage of ownership in the corporate entity of 25% or more (of the shares, voting rights.....),.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Otherwise, we would advocate for a previous definition of concepts, to ensure the same interpretation between jurisdictions and the private sector. In this regard, we would suggest: a) <u>“Direct ownership”</u> means an ownership of 25% or more of the shares or voting rights or other ownership interest <u>in the corporate entity</u>, including through bearer shareholdings. b) <u>“Indirect ownership”</u> means that the percentage of ownership described in a) is achieved through the ownership of the shares or voting rights or other ownership interest, including beares shares, <u>in one or several of the intermediate entities</u> in the chain that constitute the ownership structure of the corporate entity. (To calculate the final ownership percentage, the multiplication rule is to be applied). . FI: (Comments): We would still prefer the threshold of 10 percent instead of 25. DK: (Comments): DK:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			We welcome the clarification.
	b) control via other means over legal entities that have an ownership of 25% or more, whether individually or cumulatively, of the shares or voting rights or other ownership interest in the corporate entity;	Control of ownership interest includes a situation where someone controls a direct shareholder with a relevant shareholding. The beneficial owner is the one who controls a direct 25% share. Control via other means is defined in paragraph 1B.	ES: (Comments): This is quite confusing, as it seems that we are mixing concepts of ownership and control, while at the same last par. of this point 1 states: <i>Control through other means shall be identified independently of the existence of control of an ownership interest.</i> Therefore, we would propose to define 3 different concepts: c) <i>“Direct control of a corporate entity”</i> is exercised as a result of the ownership of 50% or more of the shares or voting rights or other ownership interest, including bears shares, of the corporate entity. d) <i>“Indirect control of a corporate entity”</i> is exercised where the percentage of direct control described in c) is achieved through the ownership of the shares or voting rights or other ownership interest, including bears shares, in one or several of the intermediate entities in the chain that constitute the ownership structure of the corporate entity. e) <i>“Control via other means”</i> means the possibility to exercise significant influence and

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<i>impose relevant decisions within the corporate entity, directly or indirectly.</i> DK: (Comments): DK: We understand point b) as directly or indirectly control through ownership interest. We find that the wording “control by other means” belong only in the proposed paragraph 1B below. In our opinion this concerns the total de facto control that a person can exercise over shares and voting rights e.g. through an ownership agreement, between shareholders and dominant influence (the majority of the voting rights in the corporate entity). DK drafting; b) control of an ownership interest ~~via other means over legal entities that have an ownership of 25% or more, whether individually or cumulatively, of the shares or voting rights or other ownership interest in the corporate entity;~~

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	c) being the beneficial owner of	The rule is the so-called top-down regime. It should be stressed that the introduction of the rule is not intended to affect the possible non-publicity of beneficial owners of legal arrangements, if non-publicity is provided for in the MS. A separate rule in AMLD6 will be amended in this respect.	NL: (Comments): We are not in favor of the top-down regime. Applying the regime applicable to trusts and similar legal arrangements would in our view lead to an unnecessary increase in BO's, which often are not relevant in the case of corporate entities. Such as the protector of a trust, or trustees, or a whole class of beneficiaries (with little individual interest in the entity. This problem would be exacerbated if the entity there are several trusts or similar legal arrangements involved. Such an approach would be difficult to implement for the BO-register and would place quite a burden on OE's while in our view having little benefit in terms of AML/CFT. We would much prefer if a substantive, more qualitative approach was applied. We would propose deletion of (c)(i)(ii) and alter (a) and (b) of this paragraph as proposed below: (a) "[...] or voting rights or other ownership interest in the corporate entity, including through bearer shareholdings, trusts and similar legal arrangements. (b) control via other means over legal entities and legal arrangements that have an ownership of 25% or more, whether individually or cumulatively, of the shares or voting rights or other

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			ownership interest in the corporate entity; IT: (Comments): We should be mindful that not all persons that are identified as BO of trusts/legal persons identified in Article 42a, have control over the assets held in that legal arrangement. In particular, we are concerned that requiring the reporting of information on all beneficiaries could lead to the registration of a large number of data and increase administrative burden, without necessarily increasing the efficacy of the transparency regime. DK: (Comments): DK: It is unclear what is meant as some of the wording is missing. In PCY non-paper on BO (September 2022) the following provision appears: <i>d) being in position of a beneficial owner of an express trust or a similar legal arrangement or multiple express trust or legal</i>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<i>arrangements, in which are placed 25% or more of the shares or voting rights or other ownership interest of the corporate entity.</i> If this is the provision that should appear in the compromise text, we have the following comments: Beneficial owners of other legal entities, trusts or similar legal arrangement should not by default be beneficial owners of the legal entity in question. The assessment of the beneficial owner must always be made on the basis of a concrete assessment of whether the natural person meets the definition of beneficial owner in Articles 2 and Article 42(1A), a) and b) and (1B), i.e. that the person owns or controls the legal entity. MT: (Comments): With reference to point (c), MT asks whether, in the case that 25% or more of the shares or voting rights of the corporate entity are placed within an express trust or similar legal arrangements, the BO is to be identified in accordance with Article 43. If so, MT finds that this will create problems where the shares are held in discretionary trusts, as in such instances the beneficiaries cannot be identified, and in any case, it would ultimately be

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			the trustee who would have control over such a trust. MT would suggest providing the option whereby, if shares are held in an express trust where the beneficiaries are identifiable, such as in fixed interest trusts, the beneficiaries of such trust are to be considered as the ultimate beneficial owners of the corporate entity in question. On the other hand, in cases where shares are held in discretionary trusts, it is the trustee who would be considered as the beneficial owner. Additionally MT proposes re-inserting the provision that the concept of ‘other ownership interest’ shall include at least the right to a share of profits or other internal resources or liquidation balance.
	i) legal persons referred to in Article 42a which have an ownership of 25% or more, whether individually or cumulatively, of the shares or voting rights or		NL: (Comments): See comment at (c) EE: (Comments): EE Comment. “Share” is an undefined term that can have different meanings within one jurisdiction and from jurisdiction to jurisdiction. Using terms that do not have any kind of

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	other ownership interest of the corporate entity, or		definition in the definition of BO will leave the definition of BO vague. AT: (Comments): Strong support. ES: (Comments): Please, clarify Do “legal persons” mean “intermediate entities” through which indirect control of the corporate entity is exercised? There is no other references to legal persons in art. 42.a, DK: (Comments): DK: Beneficial owners of legal entities referred to in Article 42a should not by default be beneficial owners of the legal entity in question. The assessment of the beneficial owner must always be made on the basis of a concrete assessment of whether the natural person meets the definition of beneficial owner in Articles 2 and Article 42(1A), a) and b) and (1B), i.e. that the person owns or controls the legal entity. DK drafting:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			~~i) legal persons referred to in Article 42a which have an ownership of 25% or more, whether individually or cumulatively, of the shares or voting rights or other ownership interest of the corporate entity, or~~
	ii) an express trusts or a similar legal arrangement, in which are placed 25% or more, whether individually or cumulatively, of the shares or voting rights or other ownership interest of the corporate entity.		NL: (Comments): See comment at (c) IE: (Comments): “Express trust” should be in the singular, not plural DK: (Comments): DK: We refer to our comments under i). DK drafting: ~~ii) an express trusts or a similar legal arrangement, in which are placed 25% or more, whether individually or cumulatively,~~

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			~~of the shares or voting rights or other ownership interest of the corporate entity.~~
	For the purpose of point (a), the indirect share shall be calculated by multiplying the shares held by the intermediate entities in the chain and by adding together the shares from the various chains.	In the case of an indirect beneficial owner, it is proposed to apply two approaches - under (a) (in conjunction with subparagraph 2) and under (b). Only by applying both rules can all relevant BOs be covered. The rule of point b) covers, for example, the case where Mr X. has a 60% share in the company. B (controls comp. B), which has a 30% interest in Co. A. Mr X controls 30% share hence he is BO of the company A.	IT: (Comments): We would like to understand whether letter a) also covers situations where a natural person exercises control by having a majority shareholding (i.e. 51%) in an intermediate corporate entity. In our view this should be the only criteria to identify indirect control. We would be in favour of deleting the sentence “For the purpose of point (a), the indirect share shall be calculated by multiplying the shares held by the intermediate entities in the chain and by adding together the shares from the various chains.”. We are concerned that the application of these criteria might lead to an excessive complexity and proliferation of presumptive BOs. AT: (Comments): In general, we would prefer the current system (without multiplying). However, we think the redraft goes in the right direction, but we still see the following unclear situation: It is unclear what to do in situation where a mix of ownership and control occurs. In particular it is not clear how this is

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
		The rule of) point a) and subparagraph 2 covers, for example, the case where Mr X. has a 30% share in the company. B (does not control comp. B), which has a 90% interest in Co. A. Mr X has 27% indirect share (0.3 X 0.9) of company A, hence he is BO of the company A.	calculated (0,49*control?*0,49) or (0,49*1*0,49): Mister X I 49% Company A I 10% ownership 90% voting rights (=control) Company B I 49% Company C This case should be clarified. In addition, it should be clarified that whenever control exits, that control has preference bevor the concept of ownership. That should be clarified in the text. It is important to cover situations where mixed ownership and control occurs. Otherwise, criminals could easily structure their beneficial ownership to circumvent the BO rules. We suggest exploring a solution where control (more than 50% as well as control by other means) is counted as 1 when multiplying shares across the chain. Drafting suggestion: <i>Control through other means shall be identified independently of the existence of control of an</i>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<i>ownership interest and should have preference over ownership interest.</i> BE: (Comments): We disagree the implementation of the mathematical approach will bring an effective added value. It will never allow to figure the reality (e.g. It is false to state that a person holding 60 % of the shares of a company holding 30 % of the customer holds indirectly 18 % of the shares of the customer (i.e. below the 25 % threshold) : the 60 % participation in the intermediary company is a controlling holding, that allows that person to have full power to influence the use of all the voting rights attached to the 30 % shareholding in the customer. In other words, in this case, 60% times 30% equals, in reality, 30% ! This has been discussed at length at the time of the negotiation of the AMLD4, and the unique consistent solution that has been found for the “indirect holding of 25 % of the shares or voting rights” consisted in considering that should qualify as UBO the natural persons who directly or indirectly controls (in the meaning of the accounting Law) a company that directly holds 25 % (or more) of the shares or voting rights of the customer. We very much insist to come back to that principle.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			SE: (Comments): One could consider to explain the the difference between point b) and point a) and subparagraph 2 in the recital. ES: (Comments): See previous comments DK: (Comments): DK: We support a top-down aproach as well as multiplying the shares in an ownership chain.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			We find that it could be helpful to have a non-paper on the calculation method including examples of calculation to ensure the same method of calculation is used by Member States. This way different structures can be discussed. Regarding the rule of point b) we refer to our comments above. We can agree to the calculation $(0,3 \times 0,9) \times 100 = 27\%$ in point a). LT: (Comments): We have reservations on provision that indirect shares will be calculated by multiplying the shares, as we believe that beneficial owners should be identified at every level of ownership.
For the purpose of this Article, ‘control via other means’ shall include at least one of the following:	1B. For the purpose of this Article, ‘control via other means over corporate entity ’ shall ~~include at least one of the following:~~ mean	It is proposed to define primarily the material basis of the concept of control and then the formal facts that always constitute control.	IT: (Comments): We don’t understand the rationale of treating “control through other means over corporate entities” separately from “control through other means on legal entities”. In our view, circumstanes under para 1B might be relevant

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	the possibility to exercise significant influence and impose relevant decisions within the corporate entity, directly or indirectly, and in any case shall include the possibility to exercise:	Within the definition of the means of control, the majority of voting rights also needs to be mentioned for the proper application of the rule in Article 42(1A)(b).	also for legal entities other than corporate entities (e.g. decision rights). We suggest the following rewording: “For the purpose of this Article, ‘control via other means <u>over corporate entity</u>’ shall ~~include at least one of the following:~~ mean” ES: (Comments): See previous comments. Overall we agree with the list of examples. However, we’ve made some minor comments below. DK: (Comments): DK: We welcome the clarification in this provision. However, we find it necessary to be more clear on what is “own and control through an ownership interest” as well as what is “control by other means”.
	(a0) the majority of the voting rights in the		IT: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	corporate entity, whether or not shared by persons acting in concert;		We stress that the condition under letter (aO) overlaps with the criteria of having 25% of the voting rights in a corporate entity set out in para 1. Moreover, there might be an inconsistency with the sentence “Control through other means shall be identified independently of the existence of control of an ownership interest.” ES: (Comments): Ok DK: (Comments): DK: We find that this provision concerns control through an ownership interest. We refer to our comments above to 1A, b).
(a) the right to appoint or remove more than half of the members of the board or similar officers of the corporate entity;	(a) the right to appoint or remove more than half of the members of the board or the administrative, management or supervisory body or similar		ES: (Comments): Ok DK: (Comments): DK:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	officers of the corporate entity;		We agree to this. However, it can be considered to refer to Article 2(39) to (41) regarding management body. DE: (Comments): The following drafting suggestions are meant to be more precise. (a) the right to appoint or remove ~~more than half a majority~~ of the members of ~~the board or similar officers of the corporate entity~~; administrative, management or supervisory body determining the financial and business policy while being a shareholder at the same time;
(b) the ability to exert a significant influence on the decisions taken by the corporate entity, including veto rights, decision rights and any decisions regarding profit distributions or leading to a shift in assets;	(b) ~~the ability to exert a significant influence on the decisions taken by the corporate entity, including~~ relevant veto rights, decision rights in the corporate entity and any decisions regarding profit		IT: (Comments): We suggest the following redrafting: “the ability to exert a significant influence on the decisions taken by the corporate entity, including relevant veto rights, decision rights in the corporate entity and any decisions regarding profit distributions or leading to a shift in assets in the corporate entity.” AT: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	distributions or leading to a shift in assets in the corporate entity ;		We do not agree with the wording. It should be clearly defined what “relevant veto rights” are and what are “decisions leading to shift in assets in the corporate entity”. ES: (Comments): ok DE: (Comments): (b) being entitled to the majority of the shareholders' voting rights;
(c) control, whether shared or not, through formal or informal agreements with owners, members or the corporate entities, provisions in the articles of association, partnership agreements, syndication agreements, or equivalent documents depending on the specific characteristics of the legal	~~(e) control, whether shared or not, through formal or informal agreements with owners, members or the corporate entities, provisions in the articles of association, partnership agreements, syndication agreements, or equivalent documents depending on the specific characteristics of the legal~~		IT: (Comments): We would like to refer also/rather to the particular “structure” of the legal entity, which might for example be incompatible with shares or voting rights. Moreover it is not clear whether examples set out for legal entities might be applicable also to corporate entities, in addition to those set out in para 1B. Finally, we would like to be sure that the list of examples is non- exhaustive. To this end, we would also support the inclusion of a mandate to the COM to provide specific guidance on how to determine BO’s in case of indirect ownership or control via other means. Guidance would prevent a too technical approach but would support

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
entity, as well as voting arrangements;	~~entity, as well as voting arrangements;~~ Depending on the particular situation of the legal entity, control over it may also be exercised, through other means, including:		harmonization and would also provide the flexibility to respond to real-life cases. We suggest the following rewording: <u>Depending on the particular situation of the corporate entity or structure of the legal entity, control through other means, in the meaning of para 1B, over it</u> may also be exercised, through other means, including but not limited to: ES: (Comments): ok LV: (Comments): We would like to find out to which part or point of Article 42 the addition proposed by PCY's applies after the deletion of sub-Article c). BG: (Comments): Please, confirm that the list of other means of control is formulated as illustrative. DE: (Comments): (c) the right to determine the financial and business policies on the basis of a control agreement entered into with another company or

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			on the basis of a provision in the statute of the other company; MT: (Comments): MT proposes the following drafting suggestions: “Depending on the particular situation of the legal entity, control through other means over such legal entity, may also be exercised through: [...]”
	(a) formal or informal agreements with owners, members or the corporate entities, provisions in the articles of association, partnership agreements, syndication agreements, or equivalent documents or agreements depending on the specific characteristics of		DK: (Comments): DK: The type of document does not constitute control by other means in itself. Only the right that may be provided for in the document. This provision is stating which documents/agreements in which the rights can appear from. This should not be part of the listing of types of rights that can determine control by other means.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	the legal entity, as well as voting arrangements		However, this should be stated either in the introduction to 1.B or in the next paragraph.
(d) links with family members of managers or directors/those owning or controlling the corporate entity;	~~(a)~~ (b) links with family members of managers or directors/those owning or controlling the corporate entity; or	„Family members“ is already defined and only includes spouse or equivalent, children and spouse/equivalent, and parents.	IT: (Comments): We would like to stress that this criteria is potentially very wide, also considering that being a manager or director is not listed per se an example of “control through other means”. We could support the inclusion of this example in an open-ended and wide list of possible means, but not if only three specific circumstances are listed. EE: (Comments): EE Comment. In addition to family members a term “close associate” is relevant in the context of PEPs. The AMLA shall also provide the criteria to determine close associate. Maybe in this context the close associate is also relevant as in this context the person might be under influence of another person AT: (Comments): We strongly disagree. The phrase “links with <i>close</i> family members of managers or directors/those owning or controlling the corporate entity” should be deleted. The manager or director itself is not considered as beneficial owner. Thus is not clear

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			why a link with its family would constitute control of the family members. In addition, it's totally unclear what is meant by link. ES: (Comments): <i>b) links with family members of ~~managers or directors~~/those owning or controlling the corporate entity; or</i> FI: (Comments): We thank the presidency for the clarification regarding family members. LV: (Comments): We consider that this subsection uses the wording "links with family members", but in Recital 66 PCY suggest to exclude it, explaining that it is no used at all. DK: (Comments): DK: We find it difficult and burdensome to control link with family members of foreign natural persons. Keeping in mind that beneficial owners are natural persons who ultimately own or control a

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			legal entity it is unclear if the intention is that all family members of a beneficial owner by default should be registered as BO's? DE: (Comments): The criteria specified under Article 42(1)(d) – “links with family members of managers or directors / those owning or controlling the corporate entity” – raise concerns. The term “links” is very vague. Does this cover family relationships? For example, are parents now deemed to be legal representatives of beneficial owners? Or spouses? The criteria cited here do not necessarily help to clarify what is meant by “control via other means”. <u>Drafting suggestion:</u> ~~(d) — links with family members of managers or directors/those owning or controlling the corporate entity;~~
(e) use of formal or informal nominee arrangements.	~~(e)~~ (c) use of formal or informal nominee arrangements.	The reference is proposed to be deleted as all relevant characteristics have been inserted directly in paragraph 1B. If Member States consider that some of the	HR: (Comments): HR supports the deletion. AT: (Comments): We strongly recommend to keep this form of control. This is the most common form of control, reported to the Austrian BO-Registers

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
		characteristics should also be taken up in the context of the BO, they may identify them.	and guarantees that the nominator is recognised as beneficial owner. ES: (Comments): ok DK: (Comments): DK: We refer to our comments under point a. Only natural persons who ultimately own or control a legal entity should be considered beneficial owners. Beneficial ownership should not be determined on the use of nominee arrangements itself. DE: (Comments): This provision seems to be imprecise and contains too many uncertainties. Drafting suggestion: ~~(e) — use of formal or informal nominee arrangements.~~
Control via other means may be determined also in accordance with the criteria	~~Control via other means may be determined also in accordance with the criteria~~		NL: (Comments): We would like the wording to be more clear that control via other means is identified parallel to

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
of Article 22(1) to (5) of Directive 2013/34/EU.	~~of Article 22(1) to (5) of Directive 2013/34/EU.~~ Control through other means shall be identified independently of the existence of control of an ownership interest.		control via ownership, which appears to be the intention. Text suggestion: Control through other means shall be identified independently of and parallel to the existence of control of an ownership interest. ES: (Comments): ok DK: (Comments): DK: We do not agree with the proposed amendments and prefer the Commission proposal or the means of control to be listed in paragraph 1B above.
2. In case of legal entities other than corporate entities, the beneficial owner(s) as defined in Article 2(22) shall be the	2. In case of other legal entities ~~other than corporate entities~~ , for which with regard to their nature, it is not appropriate to take into		IT: (Comments): We believe that this provision should introduce a simplification/presumption. Criteria under letter 1B are in any case applicable, also in the absence of an explicit reference. We suggest the following rewording:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
natural person identified according to paragraph 1 of this Article, except where Article 43(2) applies.	<i>account the ownership interest, the beneficial owner(s) as defined in Article 2(22) shall be the natural person identified according to paragraph 1B of this Article, except where Article ~~43(2)~~ 42a applies.</i>		<i>“other legal entities other than corporate entities, for which with regard to their nature, it is not appropriate to take into account the ownership interest, the beneficial owner(s) as defined in Article 2(22) shall be <u>its senior managing officials</u> ~~the natural person identified according to paragraph 1B of this Article~~, except where Article 43(2) 42a applies.”</i> AT: (Comments): This solution is not appropriate with regard to associations. They do not have any legal owner and in addition no person according to para 1B might exist and the management has to be identified. We therefore suggest to include the following sentence: »In cases were no beneficial owner can be identified according to paragraph 1B, the senior management shall be considered as beneficial owner.« ES: (Comments): ok

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			DK: (Comments): DK: We do not see the need for this provision and suggest it be deleted. DK drafting: <del>2. In case of other legal entities other than corporate entities, for which with regard to their nature, it is not appropriate to take into account the ownership interest, the beneficial owner(s) as defined in Article 2(22) shall be the natural person identified according to paragraph 1B of this Article, except where Article ~~43(2)~~ 42a applies.</del>
3. Member States shall notify to the Commission by <i>[3 months from the date of application of this Regulation]</i> a list of the types of corporate and other legal entities existing under their national laws with	3. Member States shall notify to the Commission by <i>[3 months from the date of application of this Regulation]</i> a list of the types of corporate and other legal entities existing under their national laws with		ES: (Comments): ok DE: (Comments): Delete.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
beneficial owner(s) identified in accordance with paragraph 1. The notification shall include the specific categories of entities, description of characteristics, names and, where applicable, legal basis under the national laws of the Member States. It shall also include an indication of whether, due to the specific form and structures of legal entities other than corporate entities, the mechanism under Article 45(3) applies, accompanied by a detailed justification of the reasons for that.	beneficial owner(s) identified in accordance with paragraph 1. The notification shall include the specific categories of entities, description of characteristics, names and, where applicable, legal basis under the national laws of the Member States. It shall also include an indication of whether, due to the specific form and structures of legal entities other than corporate entities, the mechanism under Article 45(3) applies, accompanied by a detailed justification of the reasons for that.		Conceivable configurations infinitely wide; there is no form of company under private law that does not fit under paragraph 1.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
4. The Commission shall make recommendations to Member States on the specific rules and criteria to identify the beneficial owner(s) of legal entities other than corporate entities by [1 year from the date of application of this Regulation]. In the event that Member States decide not to apply any of the recommendations, they shall notify the Commission thereof and provide a justification for such a decision.	~~4. The Commission shall make recommendations to Member States on the specific rules and criteria to identify the beneficial owner(s) of legal entities other than corporate entities by [1 year from the date of application of this Regulation]. In the event that Member States decide not to apply any of the recommendations, they shall notify the Commission thereof and provide a justification for such a decision.~~ The Commission is empowered to adopt delegated acts in accordance with Article 60		NL: (Comments): We understand the need for the ability to lower the thresholds but have major concerns on the impact this would have in practice. Especially given the existence of the BO-registers. If such power was given to the COM in our view it should be explicitly linked to notification from MS. Meaning, that if MS notify the COM, based on their NRA, that certain legal entities are higher risk and thus should have lower thresholds applied, this should inform the delegated act. There should be a very strong role here for the individual MS, also given the consequences for the BO-register. SE: (Comments): While we agree that risks can vary between sectors, we believe that such considerations should be made at L1 and we thus oppose that the Commission should be able to adopt delegated acts in this field. The thresholds should be made clear at level 1. ES: (Comments): ok FI: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	to amend this Regulation by identifying:		We support the draft: It is better to have the possibility for binding delegated acts instead of recommendation to ensure better harmonization and clarity. DE: (Comments): We are critical to the proposal to give the Commission the power to adopt delegated acts which set lower thresholds for determining beneficial ownership through control via an ownership interest. We do not understand the guidance on Rec. 24 to impose an obligation on Member States to lower thresholds (see wording of guidance: “In some circumstances, the results of the risk assessment may lead countries to apply different thresholds for different sectors of the economy or for different types of legal entities”). The wording suggests that lowering the threshold is only an option how to address identified shortcomings, but is not mandatory. In our view, it is therefore not necessary to empower the Commission to adopt delegated acts to ensure FATF compliance. Moreover, we consider lowering the threshold to be a substantial decision for which a delegated act is not the right instrument. Rather, in our view, a decision on lowering the threshold should be made in the regular legislative procedure or an opening clause should be included to allow member states to set a lower threshold. We also view lowering thresholds for certain legal

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			entities critically as the consequences of this for multi-tiered, cross-border structures have not been thoroughly examined yet. If the majority of Member States should assess these issues differently, the member states concerned should at least first be given the opportunity to counter the risk by other means (e.g. company law) before significant burdens because of a lower BO threshold are imposed on other stakeholders as well. Drafting suggestion: The Commission shall inform the concerned Member States of categories of legal entities that are associated with higher money laundering and terrorist financing risk, including the reasons for this assessment and the reasons why lowering the threshold is deemed to be the appropriate reaction, before it adopts the delegated act. Where Member States indicate, within two months of receiving information in accordance with sentence 1, its intentions to propose action at national level to target the identified higher money laundering and terrorist financing risk, the Commission shall abstain from adopting the delegated act. The Commission is empowered to adopt the delegated act where a Member State does not notify the action above within the time frame of 1 year.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			MT: (Comments): To MT's understanding, removing the possibility for the COM to make recommendations does not address possible issues that can arise in the context of determining beneficial ownership. Additionally, MT has its reservations on the use of delegated acts as a means to lower BO thresholds, even in the context of high-risk legal entities. MT would therefore propose to retain the original wording as proposed by the COM.
	(a) the categories of legal entities that are associated with higher money laundering and terrorist financing risk and for which a lower threshold than that set out in points (a) to (d) of the first paragraph, second sub-		EE: (Comments): EE Comment. We are not convinced that multiplying the possible number of BOs, would make the situation more transparent or clearer in the high risk situations. ES: (Comments): ok FI: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	paragraph shall be an indication of control via an ownership interest;		We support the draft, since it is now clear on which issues the delegated acts would cover. DK: (Comments): DK: We find that it is not an appropriate solution to leave it up to the Commission to make recommendations on identification and registration of beneficial owners. We have certain legal concerns in this regard, as it is not clear to the entities covered what is applicable. The BO rules should be stated clearly in AMLR and AMLD6 to secure this.
	(b) the related thresholds.		DK: (Comments): DK: We refer to our comments above to point a).

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	4A. The Commission shall review the delegated acts referred to in paragraph 4 on a regular basis to ensure that the categories of legal entities identified as associated with higher risks are correct, and that the lower thresholds imposed are proportionate and adequate to those risks.		
5. The provisions of this Chapter shall not apply to:	~~5. The provisions of this Chapter shall not apply to:~~		
(a) companies listed on a regulated market that is subject to disclosure requirements consistent with Union legislation or subject	~~(a) companies listed on a regulated market that is subject to disclosure requirements consistent with Union legislation or subject~~		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
to equivalent international standards; and	~~to equivalent international standards; and~~		
(b) bodies governed by public law as defined under Article 2(1), point (4) of Directive 2014/24/EU of the European Parliament and of the Council ⁵ .	~~(b) — bodies governed by public law as defined under Article 2(1), point (4) of Directive 2014/24/EU of the European Parliament and of the Council⁶.~~		
	<i>Article 42a</i>		AT: (Comments): Strong support.
	Identification of beneficial owners for legal entities other than corporate entities		ES: (Comments): ok

⁵ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance (OJ L 94, 28.3.2014, p. 65).

⁶ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance (OJ L 94, 28.3.2014, p. 65).

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	1. In the case of legal entities other than corporations, which are structurally or functionally similar to express trust, such as foundations and other similar legal persons, the beneficial owners as defined in Article 2(22) shall be all the following natural persons:		NL: (Comments): This is an important issue for us. In principle we understand that entities similar to express trusts should fall under those BO-rules. However, we are opposed to explicitly mentioning foundations, as foundations under Dutch law are quite different from express trusts and should not be covered. It also seems unnecessary to specifically mention foundations because they are either already covered by this par, or if they are indeed similar to express trusts in other jurisdiction they would already be covered by the express trust rules. Text suggestion: “In the case of legal entities other than corporations, which are structurally or functionally similar to express trust, such as foundations and other similar legal persons, the beneficial owners as defined in Article 2(22) shall be all the following natural persons:” EL: (Comments): We have concerns regarding the categorization of legal entities and the cumulative listing of all the persons mentioned in cases a to d.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			As a country with a civil law system, legal entities other than corporations, that is to say of non profit character are not structurally or functionally similar to express trusts. Consequently there are cases (e.g. cultural associations, unions) where this obligation can not be met, especially as regards beneficiaries. There are also cases where the founder of a foundation is deceased. IE: (Comments): Should read “similar to AN express trust” DK: (Comments): DK: We welcome this Article, which is adapted to the specific characteristics of foundations. However some adjustment is still needed. LT: (Comments): We have some reservations on this paragraph. If the legal entity is an association with 100 founders, it is impossible to submit the data of all 100 natural persons. The administrative burden is unbearable.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	(a) the founder(s);		DK: (Comments): DK: We find that the founders should not be considered beneficial owners as foundations are independent and self-governing. This means that the assets of the foundation must be irrevocably separated from the founder's assets;. Point a) should be optional to States. DE: (Comments): We ask for the deletion of "founders". Under German law, for foundations with legal capacity, the founder is not the beneficial owner of the foundation or the foundation's assets. When the foundation is formed, it becomes separate from the founder and the foundation becomes the owner of any assets given to it by the founder. The founder cannot close down the foundation anymore after its formation to get back the assets. Only if the founder is entitled to

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			foundation benefits, he may be considered to be the beneficial owner of the foundation. But in this case he would be a beneficiary and fall under letter d).
	(b) the members of the board or the administrative or management body of the legal entity;		DK: (Comments): DK: It is unclear whether the listing is a priority? Who decides which body to register?
	(c) the members of the supervisory or similar body of the legal entity;		DK: (Comments): DK: It is unclear why this is needed. It will not be applicable to Danish foundations. DE: (Comments): We ask for the deletion of “members of the supervisory or similar body of the legal entity”. In German law, they cannot act for the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			foundation and have not control over the foundation.
	(d) the beneficiaries, unless Article 43b applies,		DK: (Comments): DK: We consider it important to clarify the concept of ‘beneficiary’ so that it appears clearly that only natural persons or a group who are granted rights according to the statutes of associations or similar, and thus have ownership or control-like powers that are to be regarded as beneficial owners. To ensure this Article 2(22) should refer to this article and vice versa. Furthermore it should be clarified in the recitals. Both beneficiaris as well as class should be included as Article 43b stipulate that “Beneficiaries within the class shall be beneficial owner(s) as soon as they are identified or designated”. Foundations typically have very broad distribution purposes of a public-interest or non-profit nature. There may be individuals who receive an amount once in their lives (distribution recipients) and have nothing to do with the foundation in general. Persons receiving an

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			amount once in their lives are not in a position to direct how assets of the foundation are to be dealt with and are therefore not considered to be beneficiaries. Beneficial owners cannot reasonably be understood as any recipient of a gratuitous service/distribution from the foundation. There must be some degree of control, special right or similar in relation to the fund in order for it to be considered beneficial ownership. The specific characteristics of a foundation accordingly entails that only the board of directors and any distribution recipients (natural persons or a group of natural personer) who may have a legal claim to distributions from the foundations will be beneficial owners, cf. Article 2(22). Danish foundations will only in very exceptional cases have other benefeciale owners than the board of directors because the members of the board of directores are the only natural persons who controls the foundation. Registration of all recipients of distribution as ‘beneficiaries’ of a foundation constitutes a much stricter requirement than for corporate legal entities. A natural person will thus be able to hold shares or voting rights (up to the theshold set out in Article 42) without registration. However, if a natural person receives a student grant of DKK 2,000, that person must be considered the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			beneficial owner and registered as such with the suggested wording . In this regard, we are talking about an extremely broad circle of beneficial owners of foundations under this proposal, if any recipient of distribution is to be registered. This does not appear to meet the definition in Article 2(22) on ownership or control and is considered disproportionate. DE: (Comments): With a view to the "new" approach to determine the BO of companies held by a foundation: We would like to point out that we are deviating from the previous way of determining the BO and that all beneficiaries of the foundation would then also be required to be registered as the BO of the company. In our view, this would lead to a significant increase in entries. Especially in the case of family foundations and underage beneficiaries of foundations to a massive increase in applications for restrictions when it comes to public access to the registry. These applications for restrictions then get challenged in front of court which causes additional burden. We do not think that we can address this problem via the AMLD and the provisions on access to the transparency register. We advocate to drafting lit d) as follows:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			(d) the beneficiaries, unless Article 43b applies and unless any of the beneficiaries is not of legal age according to the law of the respective legal regime; in the case of foundations this shall only include those beneficiaries which are entitled to foundation benefits according to the charter of the foundation
	(e) any other natural person, who controls directly or indirectly the legal entity pursuant to Article 42(1B).		DK: (Comments): DK: We find that this provision significantly will expand the circle of potential beneficial owners in a way that is not necessary. It should therefore be deleted. The assessment of the beneficial owner must always be made on the basis of a concrete assessment of whether the natural person meets the definition of beneficial owner in Articles 2 and Article 42a(1)a-d) (see however our comments above), i.e. that the person owns or controls the legal entity. This means with regard to foundations under Danish law that foundations differ significantly from trusts as the assets of a foundation is irrevocably escaped from the settlor

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			and the power of access must be in the hands of an independent management. DK drafting: ~~(e) any other natural person, who controls directly or indirectly the legal entity pursuant to Article 42(1B).~~
	2. In cases where legal entities referred to in paragraph 1 belong to multi-layered control structures, where any of the positions listed under paragraph 1, points (a) to (e), is held by a legal entity, beneficial owner of the legal entity referred to in paragraph 1 shall be:		DK: (Comments): DK: This provision may lead to double registration of beneficial owners of a legal entity. We find that beneficial owners of other legal entities than the entity in question should not by default be considered beneficial owners. The assessment of the beneficial owner must always be made on the basis of a concrete assessment of whether the natural person meets the definition of beneficial owner in Articles 2 and Article 42a(1)a)-d) (see however our

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			comments above), i.e. that the person owns or controls the legal entity.
	(a) the natural persons listed in paragraph 1, points (a) to (e), and		DK: (Comments): DK: We refer to our comments above.
	(b) the beneficial owner of the legal entities that occupy any of the positions listed in paragraph 1, points (a) to (e).		DK: (Comments): DK: We find that beneficial owners of the legal entity should not by default be considered beneficial owner, but only if the natural person fulfill the definition in article 2(22) and have such ownership-like powers or control of the foundation.
	3. Member States shall notify to the Commission		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	by [3 months from the date of application of this Regulation] a list of legal entities, where the beneficial owner(s) is identified in accordance with paragraph 1.		
Article 43	Article 43		AT: (Comments): <i>Strong support.</i>
Identification of beneficial owners for express trusts and similar legal entities or arrangements	Identification of beneficial owners for express trusts and similar legal entities or arrangements		SE: (Comments): This article is applicable to express trusts and similar legal entities or arrangements. Article 42a is also applicable to entites similar to express trusts. As some other MS also indicated during the WP, we think there is a need for clarification when to apply art 42a and when to apply article 43 to entities similar to express trusts. .

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
1. In case of express trusts, the beneficial owners shall be all the following natural persons:	1. In case of express trusts, the beneficial owners shall be all the following natural persons:		
(a) the settlor(s);	(a) the settlor(s);		
(b) the trustee(s);	(b) the trustee(s);		
(c) the protector(s), if any;	(c) the protector(s), if any;		
(d) the beneficiaries or where there is a class of beneficiaries, the individuals within that class that receive a benefit from the legal arrangement or entity, irrespective of any threshold, as well as the class of	(d) the beneficiaries, unless Article 43b applies, or ~~where there is a class of beneficiaries, the individuals within that class that receive a benefit from the legal arrangement or entity, irrespective of any threshold,~~		DE: (Comments): We suggest the implementation of a threshold. Otherwise in certain cases (e.g. such as foundations for the support of students giving monthly money for food to hundreds of students) an indefinite number of beneficiaries has to be registered. (d) the beneficiaries or where there is a class of beneficiaries, the individuals within that class

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
beneficiaries. However, in the case of pension schemes within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council ⁷ and which provide for a class of beneficiaries, only the class of beneficiaries shall be the beneficiary;	~~as well as the class of beneficiaries. However, in the case of pension schemes within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council and which provide for a class of beneficiaries, only the class of beneficiaries shall be the beneficiary;~~		that receive a benefit, ~~above a value of XX Euros per month~~ , from the legal arrangement or entity; ~~irrespective of any threshold~~ , as well as the class of beneficiaries. However, in the case of pension schemes within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council and which provide for a class of beneficiaries, only the class of beneficiaries shall be the beneficiary;
(e) any other natural person exercising ultimate control over the express trust by means of direct or indirect ownership or by other means, including	(e) any other natural person exercising ultimate control over the express trust ~~by means of direct or indirect ownership or by other means;~~		

⁷ Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
through a chain of control or ownership.	~~including through a chain of control or ownership.~~		
	‘Express trust’ means a trust intentionally created by the settlor, inter vivos or on death, to place assets under the control of a trustee for the benefit of a beneficiary or for a specified purpose.		IE: (Comments): Not agreed. We must <u>insist</u> that the previous definition is re-inserted that was agreed at WP: ‘Express trust’ means a trust intentionally created by the settlor, usually in the form of a document e.g. a written deed or written instrument of trust to usually fulfil a business or personal need. The only trusts <u>for AML purposes</u> that should be captured are express trusts, which are ones that are deliberately formed, in writing, for a specific business or personal purpose. We refer again to the non-paper we submitted to the 18 July WP meeting. LT: (Comments): It should be moved to the part of definitions. MT: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			MT proposes the following drafting amendments: ‘Express trust’ means a trust intentionally created by the settlor, inter vivos or on death, in the form of a document such as a written deed or other written instrument of trust, to place assets under the control of a trustee for the benefit of a beneficiary or for a specified purpose, and to the exclusion of trusts which are created by operation of the law.
	1A. 2. In cases where trusts or similar legal arrangements belong to multi-layered control structures, where any of the positions listed under paragraph 1, points (a) to (e), is held by a legal entity, beneficial owner of the		IE: (Comments): The phrase “trust” should be replaced with “express trust” in this Regulation for consistency of terminology. DK: (Comments): DK: We refer to our comment to art. 42a(2) above.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	trusts and or similar legal arrangements shall be:		
	(a) the natural persons listed in paragraph 1, points (a) to (e), and		
	(b) the beneficial owner of the legal entities that occupy any of the positions listed in paragraph 1, points (a) to (e).		MT: (Comments): In MT's view, extending further the concept of 'beneficial owners' of a trust to the natural person UBOs behind each and every party of the trust where such party is a legal person is, taking the legal fiction to another extreme. One needs to appreciate that in many cases the trustee will be a professional trustee set up as a body corporate, where some of the shareholders are part of a group structure, and the UBO is therefore very remote from the trust itself. In a manner the same can be said of the settlor, where in terms of

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			the concept of a trust, the settlor should have divested himself completely of ownership and full control over the trust for it to be a valid trust. MT however supports adopting an approach where the natural person UBO(s) of beneficiaries of trust (i.e paragraph 1 point (d)) are legal persons, they <u>should</u> be deemed as beneficial owners and therefore also duly reported in BO registers.
2. In the case of legal entities and legal arrangements similar to express trusts, the beneficial owners shall be the natural persons holding equivalent or similar positions to those referred to under paragraph 1.	2. In the case of ~~legal entities and~~ legal arrangements similar to express trusts, the beneficial owners shall be the natural persons holding equivalent or similar positions to those referred to under paragraph 1.		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Member States shall notify to the Commission by <i>[3 months from the date of application of this Regulation]</i> a list of legal arrangements and of legal entities, similar to express trusts, where the beneficial owner(s) is identified in accordance with paragraph 1.	2A. Member States shall notify to the Commission by <i>[3 months from the date of application of this Regulation]</i> a list of legal arrangements ~~and of legal entities~~ , similar to express trusts, where the beneficial owner(s) is identified in accordance with paragraph 1. Such notification shall be accompanied by an assessment of which of the legal arrangements that are regulated or recognised under their national law or, when based on the general principle of the autonomy of the contracting parties,		IE: (Comments): If a MS decides themselves that a similar legal arrangement is not to be considered as similar to an express trust, what happens then? Does the Commission have a right to overrule? This is not agreed if the Commission cannot object or decide that an arrangement must register. DE: (Comments): We support the suggested drafting.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	delimited by jurisprudence and doctrine, are to be considered as similar to express trusts and which are not.		
3. The Commission is empowered to adopt, by means of an implementing act, a list of legal arrangements and legal entities governed under the laws of Member States which should be subject to the same beneficial ownership transparency requirements as express trusts. That implementing act shall be adopted in accordance with the	~~3. — The Commission is empowered to adopt, by means of an implementing act, a list of legal arrangements and legal entities governed under the laws of Member States which should be subject to the same beneficial ownership transparency requirements as express trusts. That implementing act shall be adopted in accordance with the~~		IE: (Comments): Not agreed. The Commission must be able to assess and ultimately decide that a legal arrangement is similar to an express trust and therefore must register. Otherwise the situation will arise where yet again only Ireland as a common law jurisdiction will have anything remotely resembling a trust on a register. DE: (Comments): We explicitly support the deletion of Art. 43 para. 3. It shall remain for MS to determine which legal arrangements are similar legal arrangements and should fall under the BO-Chapter. MT: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
examination procedure referred to in Article 61(2) of this Regulation.	~~examination procedure referred to in Article 61(2) of this Regulation.~~		MT would appreciate a clarification as to why this paragraph has been deleted. MT would prefer retaining the original wording.
	<i>Article 43a</i>		
	Identification of beneficial owners for collective investment undertaking		IT: (Comments): We strongly believe that it is crucial to eliminate Article 43a, Article 43b (4) and 44 (1) letter e) of the AMLR, for the following reasons. The identification of beneficial owners for all corporate entities (including UCIs set up as corporate entities) should be carried out by applying the criteria laid down in Article 42 of the AMLR. Therefore, Article 43a (1) would be redundant and unnecessary. Article 43(2) provides that the beneficial owners of CIUs set up as legal arrangements should be <u>the natural persons holding equivalent or similar positions to those referred to in Article 43(1)</u> (namely the settlor, the trustee, the beneficiaries or a class of beneficiaries).

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			In most cases CIUs (set up as legal arrangements) cannot be assimilated to trusts because they have different legal structures. When a CIU, such as a UCITS fund or an AIF, is a collective contractual fund established as a separate pool of assets, it is not appropriate to treat it as being a trust. In these cases, there are no natural persons in the CIUs who hold the positions (or similar positions) listed by Article 43(1). CIUs have structures and characteristics which often differ between Member States and take the form of trusts only in few cases. Therefore, it is not possible to consider CIUs as “legal arrangements” to which trust-like rules apply. The same considerations should be made with reference pension schemes within the scope of Directive (EU) 2016/2341(IORP II). As regards CIUs, not all pension schemes are set up as trusts. Therefore, Article 43b (4) does not consider all possible legal structures under which a pension scheme may be established. IE: (Comments): Agreed in its current form

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	1. In the case of collective investment undertaking set up as a corporate entity, the beneficial owner(s) shall be the natural person(s) identified according to paragraph Article 42.		SE: (Comments): It seems like there is missing a word after “paragraph”. IE: (Comments): There is a paragraph reference missing. The text reads “the beneficial owner(s) shall the the natural person(s) identified according to paragraph (???) of Article 42.
	2. In the case of collective investment undertaking set up as legal arrangement, the beneficial owners shall be the natural persons holding equivalent or similar positions to those referred to in Article 43(1).		HR: (Comments): HR Our understanding is that in case of funds without a legal personality, the investors in such funds (UCITS, AIF, pension funds) would not be considered “beneficiaries”, because the derogation under Article 43b applies, and this provision shall apply: “4. <i>In the case of collective investment undertakings under Article 43a(2) and pension schemes within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council and which provide for a class of beneficiaries, only the class of beneficiaries shall be identified.</i> ”

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			In the context of investment and pension funds, could you clarify what is meant by a “<i>class of beneficiaries</i>” and what is expected to be disclosed/identified? As an example, if a UCITS can have share classes. Share classes are categories of shares which belong to the same UCITS but which allow subsets of investors in the UCITS to achieve some level of customisation which accommodates their specific needs (eg the distribution of revenues, different fees, a particular tax treatment or a different minimum investment amount). If a fund has three share classes, is the identification simply to be: - beneficiaries of share class A (higher fees, more revenues) - beneficiaries of share class B (lower fees, less revenue) - beneficiaries of share class C (professional investors only). In this case, will it also be necessary to state how many investors in the fund are in these classes? <u>Can you confirm this understanding, and clarify if necessary?</u> IT: (Comments): We would like to understand whether article 43a 2, also applies to investment funds who are not incorporated and are managed by asset

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			management companies. If this is the case, we would like to understand whether the cross-reference to article 43(1) requires all beneficiaries, i.e. all investors of the fund to be considered as beneficial owners or if 43b (4) is intended to avoid such consequence. We stress that, in our view, OEs entering into a business relationship with/executing occasional transactions on behalf of management companies should not be required to identify all fund investors as beneficial owners, since investors are not individually in the position of determining the fund's investment choices. On the contrary, they should only identify the natural person(s) owning or controlling the management company as BOs, since those are the persons that have actual decision-making powers on the investment strategy. IE: (Comments): “Set up as a legal arrangement” “beneficial owner(s)” “natural person(s)”
	<i>Article 43b</i>		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	Identification of a class of beneficiaries		
	1. In case of legal entities under Article 42a or express trusts and similar legal arrangements under Article 43, where beneficiaries have yet to be determined, the class of beneficiaries and its characteristics shall be identified. Beneficiaries within the class shall be beneficial owner(s) as soon as they are identified or designated.		DE: (Comments): We propose to limit the definition to those beneficiaries who continually receive benefits and exclude those who are only entitled to a one-off benefit. Beneficiaries only entitled to a one-off benefit are creditors of the legal entity/arrangement and not its beneficial owners. They also have no control over the legal entity/arrangement, but can only claim the benefit intended for them. MT: (Comments): It is not clear what is meant by “Beneficiaries within the class shall be beneficial owner(s) as soon as they are identified or designated.” For the purposes of the national BO register for trusts, MT has taken an approach that where any ‘member’ of the class of beneficiaries is identified in the trust instrument or any other document from the settlor, such beneficiary should be deemed reportable. Sometimes these

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			individuals may be mentioned but not necessarily aware of the trust as yet, or even entitled to benefit if their benefit is conditional. In that case trustees are allowed to report only up to the personal details they have available if there have been no triggers for the verification of identity of those beneficiaries (for example there was no pay out). It should therefore be clarified what is meant by “identified or designated” and also what would be the consequential requirements of such identification or designation, bearing in mind the above possibilities.
			IE: (Comments): <i>2. In the following cases, only the class of beneficiaries and its characteristics shall be identified:</i> <i>a) pension schemes within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council and which provide for a class of beneficiaries,</i> <i>b) employee financial ownership or participation schemes;</i>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	2. In case of legal entities under Article 42a, express trusts and similar legal arrangements under Article 43 only the class of beneficiaries and its characteristics shall be identified, provided that:		IE: (Comments): <i>(c) legal entities under Article 42a, express trusts and similar legal arrangements under Article 43 provided that:</i>
	a) the legal entity or the express trusts and similar legal arrangement is set up for a non-profit or charitable purpose; and		IE: (Comments): <i>(i) the express trust, legal entity or similar legal arrangement is set up for a non-profit or charitable purpose; and</i> DK: (Comments): DK: We welcome this with regard to foundations that will be covered by Article 42a. How does this provision apply to non-profit associations, if applicable to BO rules, with

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			regard to recital 67a stating management only should be registered?
	b) following an appropriate risk assessment, Member States have concluded on a proven low risk that the legal person or legal arrangement be misused for money laundering or terrorist financing.		IE: (Comments): (ii) <i>following an appropriate national risk assessment, Member States have concluded that the express trust, legal entity or similar legal arrangement is considered to be at a low risk of misuse for money laundering or terrorist financing</i> DK: (Comments): DK: We welcome the possibility for Member States to adjust the BO requirements based on a low risk assessment. However it is unclear whether such an assessment can be made for a certain type of legal entities or should be individually determined.
	3. Member State shall notify to the Commission		IE: (Comments): “Member States”

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	the categories of legal entities or express trusts and similar legal arrangements where identification is under paragraph 2, together with a justification based on the specific risk assessment. The Commission shall communicate that decision to the other Member States.		“legal entities, express trusts or similar legal arrangements” It is unclear why the Commission would communicate this decision to other Member States when in no other article does this occur. What is the practical purpose behind this?
	4. In the case of collective investment undertakings under Article 43a(2) and pension schemes within the scope of Directive (EU) 2016/2341 of the European Parliament and of the		SE: (Comments): Are there any restrictions on how a class of beneficiaries is decided, or can a class of beneficiaries be for example “all persons owning shares in a fund”? In which situations would a collective investment undertaking/pension schemes include a class of beneficiaries? Are there situations when a collective investment undertaking does not include such a class? If no – when will 43a (2) be applicable, given that, as

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	Council and which provide for a class of beneficiaries, only the class of beneficiaries shall be identified.		we understand it, there will always be an exemption from this article that is applicable? We think there is a need for clarification in these respects. We suggest that the word “pension schemes” is replaced with “institutions for occupational retirement provision (IORPs)”. IE: (Comments): Delete, reference to pension funds as they are now in our proposed para 2 above. MT: (Comments): MT would like to clarify whether this rule is to apply in all cases where the collective investment undertaking is set up as a trust, or whether the trust instrument must provide for specific classes. In other words, how specific must the conditions be to outline the class of beneficiaries? Is it enough for investors of a specific sub-fund to be classified as a class of beneficiaries? If not, the same problem as previously identified remains, i.e., the investors/beneficiaries to a collective investment undertaking may run into the hundreds, if not thousands and may also change frequently – rendering it impossible to identify each and every beneficiary irrespective of their respective entitlement within the investment undertaking.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Additionally, it should be considered whether to also extend this provision to other pension schemes (other than occupational pension schemes), as sometimes there may be large volumes of members/beneficiaries of such pension schemes which may not all necessarily be receiving benefits as their benefits would be triggered upon the happening of certain conditions in the pension scheme.
	<i>Article 43c</i>		
	The provisions of this Chapter shall not apply to:		ES: (Comments): ok DE: (Comments): We see the need to clarify what exactly is exempted from the application. We understand companies listed on a regulated market (provided that they fulfill lit i) and ii) do not have to register with the transparency register.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Since Art. 16 para 1 lit b) has a cross-reference to Art. 42 and 43, we are unsure, whether the provisions could be read the way, that obliged entities are exempted from identifying the BO of a company listed on the regulated market. We reserve further comments pending the clarification sought.
	(a) companies listed on a regulated market , provided that:	Please see recital 68a	HR: (Comments): HR Rules from Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC regarding information about major holdings apply only to issuers whose shares are admitted to trading on a regulated market and to which voting rights are attached. Thus, companies which bonds (and not shares) are listed on a regulated market will not be encompassed by transparency rules in the same way. Having said that, we believe that Article 42(5) merits redrafting. We believe that exceptions related to listed companies should be taken into account only if company has listed shares on a regulated market. IT:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			(Comments): We would like the AMLR to explicitly clarify that for customer that are listed companies the CDD obligation to identify their BO remains in place. AT: (Comments): We still do not support the exception for listed companies. The new wording is better, but unclear. Our experience shows that also listed companies have beneficial owners because of ownership or control. These persons may also be listed persons. With this exception transparency will be greatly reduced, as the information on beneficial owners of listed companies is not easy assessable and available in an electronic format for analyses, thus reducing the possibilities to detect shares of sanctioned persons in listed companies. SE: (Comments): We suggest that this exception should be applicable to all companies listed on a regulated market. DK: (Comments): DK:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			We prefer to leave this exemption in accordance with the current AMLD. Furthermore, we find it important that Member States can exempt certain legal entities, provided that they are subject to CDD procedures. DK drafting: <u>d) Member States may exempt certain legal entities from this Chapter, provided that:</u> <u>(a) the Chapter applies to the widest possible range of corporates and other legal entities and</u> <u>(b) the exempted legal entities are subject to CDD-procedures.</u>
	(i) control over the company is exercised exclusively by the natural person with the voting rights and		DK: (Comments): DK drafting: ~~(i) control over the company is exercised exclusively by the natural person with the voting rights and~~
	(ii) no other legal persons or legal arrangements are part of		DK: (Comments): DK drafting:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	the company's control structure;		~~(ii) — no other legal persons or legal arrangements are part of the company's control structure;~~
	(b) bodies governed by public law of a Member State as defined under Article 2(1), point (4) of Directive 2014/24/EU of the European Parliament and of the Council.		NL: (Comments): This should include international organizations established by treaty, such as UN-bodies. IT: (Comments): <i>We think that a definition for public sector bodies should be different from the one used in EU public procurement law. Whether in that context the width of the definition is useful to catch most entities that may avoid public procurement rules given their specific legal nature, here it could be used to circumvent the application of the BO transparency rules. Thus, we should limit the exemption to those entities governed by public law whose governance and control structure is fixed by legislation and is already subject to information disclosure duties</i>. EL: (Comments): ~~(b) bodies governed by public law of a Member State as defined under Article 2(1), point (4) of Directive 2014/24/EU defined as~~ general government under chapter S.13 of

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Regulation (EU) 549/2013 of the European Parliament and of the Council. FR: (Comments): In France, the oversight of our établissements publics commerciaux et industriels (EPIC) is conducted by a ministry which would force us to designate the minister as beneficial owners. We are hence in favor of making clear the following: <i>(b) bodies governed by public law of a Member State as defined under Article 2(1), point (4) of Directive 2014/24/EU of the European Parliament and of the Council, <u>including those having an industrial or commercial character</u></i> MT: (Comments): MT would like to reiterate its previous position that interpretative note to Recommendation 10 includes within its scope the ‘majority-owned subsidiary’ of bodies governed by public law of a MS. In line with this, MT supports to extend the current exemption under the AMLR to subsidiaries.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
<i>Article 44</i>	<i>Article 44</i>		
Beneficial ownership information	Beneficial ownership information		
1. For the purpose of this Regulation, beneficial ownership information shall be adequate, accurate, and current and include the following:	1. For the purpose of this Regulation, beneficial ownership information obtained by obliged entities, submitted to the beneficial ownership register referred to in Article 10 of Directive and held by legal persons and trustees or equivalent in the case of express trusts and similar legal arrangements shall be adequate, accurate, and	Please see recital 69a	IT: (Comments): We would like to reaffirm our preference for having two separate BO data set: i) one addressed to the legal entities for the fulfillment of transparency obligations; ii) another (more limited) for the purpose of CDD measures to be put in place by obliged entities. Therefore, we are not in favor of including the wording “obtained by obliged entities” in the chapeau of article 44. If the data set should remain unique, we believe that requiring obliged entities to always acquire the information regarding “national identification number” of the beneficial owner as part of the CDD process is excessive (see article 44, letter a). Please also see comment under article 18(2). ES: (Comments): ok FI: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	current and include at least the following:		We are a bit unsure of the BO registering obligations: which would now be the entities that need to provide the information to the BO register, or could this information still be deducted like it is now regarding certain entities, where the senior management is registered as BO's. DK: (Comments): DK: The addendum to the first paragraph is however unclear to us as obliged entities are covered by Article 19(4), which among other refer to Articles 42 and 43. Maybe the rationale behind can be elaborated?
(a) the first name and surname, full place and date of birth, residential address, country of residence and nationality or nationalities of the beneficial owner,	(a) ~~the first name and surname~~ all names and surnames , ~~full place~~ and date of birth, residential address, country of residence and nationality or		NL: (Comments): We do not agree with the removal of the full place of birth. Also, in our national implementation of the BO-register we require the registration of identity documents which is quite important for the register to correctly identify the BO's and the verify the information registered.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
national identification number and source of it, such as passport or national identity document, and, where applicable, the tax identification number or other equivalent number assigned to the person by his or her country of usual residence;	nationalities of the beneficial owner, national identification number ~~and source of it, such as passport or national identity document, and, where applicable, the tax identification number~~ or other equivalent number assigned to the person by his or her country of usual residence, such as tax identification number, and general description of the source of such identification number, such as passport or national identity document;		AT: (Comments): <u>We have strong objections with regard to the following elements of the draft:</u> Place of birth: This should be included, in order to avoid problems with persons with the same name and date of birth. We have a limited number of persons, were we need the place of birth to distinguish. In addition, the place of birth is recommended, for good reasons by the FATF Draft Guidance on Beneficial Ownership (R.24), page 22, no 51. tax identification number: the tax identification number of foreign nationals will be difficult to obtain and to verify. There is also no common standard for documents for verification of the tax identification number. In addition, in Austria for example not every natural person will have a tax identification number and also the same natural person will have different tax numbers for different taxes. In addition, the tax number will change in some instances, for example if a natural person becomes self-employed after being a wage earner. <u>Tax identification number should not be mandatory and could be an additional source of information.</u> In the FATF Draft Guidance on

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Beneficial Ownership (R.24), page 22, no 51, it is only included as additional information. national identification number: this number might be used only internally by a country for the means of online verification and may be used internally, but not submitted to obliged entities. Thus the text should be more open to the use of different number, as long as they guarantee an identification of the person. Not all third countries will have a personal identification number. In addition this a tax identification number will not be included in the passport or an national identity document. There is no common standard for documents for verification. <u>National identification number should not be mandatory.</u> <u>We strongly insist to include a passport number,</u> because it can be easily verified for third countries (source passport!) and is currently used for criminal investigations. In addition, it can be crosschecked with other data bases (lost or stolen documents). In addition, the passport number is recommended, for good reasons by the FATF Draft Guidance on Beneficial Ownership (R.24), page 22, no 51. We strongly recommend to align the draft to the FATF Draft Guidance on Beneficial

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Ownership, which distinguishes between mandatory and useful information. This acknowledges that not all information will be available in all jurisdictions. We propose the following amendment of the draft: <i>(a) all names and surnames, place and date of birth, residential address, country of residence and nationality or nationalities of the beneficial owner <u>and if available a unique</u> national identification number or other equivalent number assigned to the person by his or her country of usual residence, such as an internal administration number, a tax identification number, a passport number or a social security number and general description of the source of such identification number, such as passport or national identity document;</i> The new wording clarifies there should be one identifier if available. According to the jurisdiction where the beneficial owner is from, the appropriate identification number may be used. SE: (Comments): We oppose residential addresses being registered as this information is already available in a public register. FR: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			We are in favor of reinstating the full place of birth. ES: (Comments): Please consider that <i>the place of birth</i> can provide more accurate information in cases of individuals with several nationalities. FI: (Comments): What if there is no identity number or other equivalent number assigned to the person by his or her country of usual residence? IE: (Comments): Not agreed. First name and surname only. BG: (Comments): The information listed in Art. 44 (1), (a) AMRL includes residential address and the general description of the source of national identification number. The information concerning the residential address can be often changed and no proper mechanism for the check of this information exists - the beneficial owner could easily change his/her residential address but state authorities will face obstacles if they have to check whether this change has in fact occurred. We therefore recommend excluding the residential address from the information in

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Art. 44 (1), (a) AMRL, or alternatively using “legal address” as the address we use for paying taxes, voting, registering cars. We suggest that we keep the particular information about full place and date of birth, especially to avoid discrepancies between Article 12 AMLD and Art. 44 (1), (a) AMRL In addition, it should be clarified whether the general description of the source of the identification number is related only to pointing the type of the document (passport/national identity document) or the number of that document will be also required. DE: (Comments): On all names and surnames: We welcome the drafting that all names and surnames of beneficial owners should be included in order to better identify them. On place and date of birth: We welcome, that date of birth has been reintroduced. The deletion of place is problematic for us since it is an important factor for unique identification (especially of sanctioned persons). On the residential address: There are concerns about an excessive collection of personal data when it comes to the residential address of beneficial owners. This additional

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			data field will cause a significant burden for the registries also with the view to ongoing updates of addresses and requests for exceptions to the disclosure of such an information (Art. 13 of AML DIR). On the national identification number: In Germany no national identification number is in place and passports or other national identity document numbers do not serve as an identification number. The tax identification number is only allowed to be used for tax purposes. Therefore, the tax identification number – if added at all – may only be added as “<u>where applicable</u>”. We would also like to call attention to the fact that legal entities that must report to registers often do not know the tax identification number of their beneficial owners, or must at least make a considerable effort to obtain such numbers. On the other hand, tax identification number could bring added value for the clear identification of the beneficial owner. In light of this, the national identification number and tax identification number should be included where applicable unless they cannot be obtained with reasonable effort. The obliged entity should be able to demonstrate that it has made reasonable efforts to obtain the data

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			We deem our comments to be in line with FATF-standards and explicitly Rec. 24 as the draft guidance states the following: Draft guidance on Rec. 24: <i>51. With regard to the identity of the natural person who is the beneficial owner, the Interpretive Note provides examples of information³, which countries should consider recording. While the Interpretive Note to Recommendation 24 does not provide any qualification or ranking of the above mentioned information, some information may be considered as necessary in order to identify a person (e.g. first and last name, nationality(ies) and date of birth), while other information may be useful to further confirm the identity of a person, such as a unique national identification number (e.g. an internal administration number, a tax registration number, an identity number or a social security number), passport number and document type, place of birth and residential address, and the tax identification number or equivalent in the country of residence</i> Drafting suggestion: (a) the first name and surname, full place and date of birth, residential address, place and

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			country of residence and nationality or nationalities of the beneficial owner, national identification number and source of it, such as passport or national identity document, and, where applicable, the national identification number and source of it, such as passport or national identity document, the tax identification number or other equivalent number assigned to the person by his or her country of usual residence;
(b) the nature and extent of the beneficial interest held in the legal entity or legal arrangement, whether through ownership interest or control via other means, as well as the date of acquisition of the beneficial interest held;	(b) the nature and extent of the beneficial interest held in the legal entity or legal arrangement, whether through ownership interest or control via other means, as well as the date of acquisition of the beneficial interest held or, if the		EE: (Comments): EE Comment. We would support if the date of the start of the BO position would be submitted in any case as this can be relevant information when checking the compliance of the OEs and when collecting evidence in the investigation. ES: (Comments): ok DK: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	beneficial owner's position is not based on an ownership interest, the date, if known, of start and termination of the beneficial owner position;		DK: It is unclear why the proposed text is needed as the current wording "beneficial interest" seems to cover this. Would it be enough to add date of termination? DK drafting: (b) the nature and extent of the beneficial interest held in the legal entity or legal arrangement, whether through ownership interest or control via other means, as well as the date of acquisition and termination of the beneficial interest held ~~or, if the beneficial owner's position is not based on an ownership interest, the date, if known, of start and termination of the beneficial owner position;~~ BG: (Comments): The information listed in Art. 44 (1), (b) AMRL includes the date of acquisition of the beneficial interest held or the date of start of the beneficial owner position. It is not clear how the date of acquisition of the beneficial interest held or the date of creation of the beneficial ownership position will be proved in case of contradictions/dispute. In addition, in principle, the date of termination of the beneficial owner position of the previous beneficial owner is the same as the date of creation of the beneficial owner position of the new beneficial owner, so

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			we do not consider it necessary for the date of termination of the beneficial ownership position to be required and submitted. MT: (Comments): The requirement to include the date of acquisition of the beneficial interest held, may be particularly burdensome to keep up with in terms of reporting. Also, the new wording “or, if the beneficial owner’s position is not based on an ownership interest, the date, if known, of start and termination of the beneficial owner position” is not clear and indeed seems to be somewhat contradictory.
(c) information on the legal entity or legal arrangement of which the natural person is the beneficial owner in accordance with Article	(c) information on the legal entity or legal arrangement of which the natural person is the beneficial owner in accordance with Article ~~16~~ 18 (1) point (b), ~~as well as~~		ES: (Comments): ok DK: (Comments): DK:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
16(1) point (b), as well as the description of the control and ownership structure.	~~the description of the control and ownership structure. in~~ case of legal arrangement, information about its name and identification number, where applicable, the type of legal entity or legal arrangement, the date of its creation and description of its purpose;		According to Article 10(1) in AMLD Member States shall ensure that beneficial ownership information referred to in Article 44 is held in a central register. It is unclear if this means that the purpose of the legal entity in question must be registered? BG: (Comments): We refer to our previous comments. DE: (Comments): We do not see the added value in terms of transparency of the BO to collect information on the date of the creation of a legal entity and the description of its purpose. LT: (Comments): We have reservations on proposal that the description of purpose should be collected, as such a criterion is difficult to identify, especially when the activity of a legal entity/arrangement is multifunctional. MT: (Comments): It is not clear what ‘description of its purpose’ is aimed at capturing. Is this applicable only to

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			purpose trusts? Or to all trusts? This would be incredibly complex to capture as sometimes there are complex family and/or business reasons behind the setting up of a trust, which may not be captured in a few words, and in any case in MT's view extends way beyond the purpose of a <u>beneficial ownership register</u> .
	(d) where the ownership and control structure contains more than one legal entity or legal arrangement, a description of such structure, including names and, where applicable, identification numbers of the individual legal entities or legal arrangements that are part of that structure, and a		IT: (Comments): We are concerned that the data set required under letter d) might be excessive. EE: (Comments): EE Comment. Is it allowed to submit such description in electronic and/or visual format. For example the register itself based on all the information it has creates vizualisation that the submitter of the information can verify. ES: (Comments): ok DK: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	description of the relationships between them, including the share of the interest held;		DK: We find that the description mentioned as minimum will be part of the documentation the legal entity must obtain in accordance with the assessment of who is beneficial owners. According to Article 10(1) in AMLD Member States shall ensure that beneficial ownership information referred to in Article 44 is held in a central register. However, it is unclear whether the description in point d will lead to the registration of ownership chain. This will be overly burdensome and unproportioned. BG: (Comments): We support the amendment but we recommend further clarification of the “description of the relationships between them”. It should be clear whether the description of the relationships in case of several entities includes the immediate relationships or the relationships between all the entities in the chain. DE: (Comments): Under Article 44(1)(d), the required information on beneficial ownership and/or legal entities subject to transparency requirements includes a “description of the control and ownership structure”. However, Article 44 does not specify

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			who must compile and/or report this information; it also does not specify how or by whom such information is inspected. We kindly request a more precise wording here. MT: (Comments): In MT's view, this is leading to a full-blown register of trusts and not merely a register of beneficial ownership register of trusts. This information would be very useful to understand complex structures, however it is recommended that the institution responsible for the relevant register is <u>empowered</u> to request such additional information which should be kept internally, but it should not be requirement to be included in the register.
	(e) where a class of beneficiaries is identified under section 43b, description of the		IE: (Comments): What kind of meaningful information are you expecting from this requirement? For example, in the case of a pension scheme, the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	characteristic of the class of beneficiaries.		decription will merely be “members/beneficiaries of the Google pension scheme”. This seems unnecesary. Also, the charateristics of the trust are already being sought under 43b(2)
	‘Ownership or control structure’ means the relationships by which is legal entity indirectly owned or controlled or by which is legal arrangement controlled; the structure includes those persons and legal arrangements that mediate the position of beneficial owner or the entity with ultimate control.		ES: (Comments): ok MT: (Comments): This wording is not particularly clear in the context of trusts and legal arrangements.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
2. Beneficial ownership information shall be obtained within 14 calendar days from the creation of legal entities or legal arrangements. It shall be updated promptly, and in any case no later than 14 calendar days following any change of the beneficial owner(s), and on an annual basis.	~~2. Beneficial ownership information shall be obtained within 14 calendar days from the creation of legal entities or legal arrangements. It shall be updated promptly, and in any case no later than 14 calendar days following any change of the beneficial owner(s), and on an annual basis.~~		ES: (Comments): ok BG: (Comments): We are in favour of removing the annual basis update in the central register. Regarding the former proposed requirement for an annual updating of the beneficial ownership information we have already pointed out that it would involve a significant administrative burden. Regarding the proposed requirement for an annual check or confirmation of the date in the register first, it should be clarified who the obligation is addressed to. If the obligation is for obliged entities to perform annual data checks on their clients, then this should be done following a risk-based approach. For the National Registry Agency, it would involve a significant administrative burden. Additionally, it is not clear how the obliged authority will perform that check and who will have the duty to present the relevant documents and to prove that there is no change. Under Bulgarian law it is forbidden to prove negative facts.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			BG: (Comments): It should be noted that beneficial ownership registers are being interconnected across Europe and, in some cases, accessible by members of the public. Some of the information listed in Art. 44 (1), (a) AMRL may contain personal data according to Regulation (EU) 2016/679 (General Data Protection Regulation). In case that personal information is published or entered in the register we recommend it should be explicitly mentioned that disclosing personal data by entering it into the BO register does not infringe Regulation (EU) 2016/679 (General Data Protection Regulation).
Article 45	Article 45		
Obligations of legal entities	Obligations of legal entities		
1. All corporate and other legal entities incorporated in the Union shall obtain and hold	1. All corporate and other legal entities incorporated in the Union shall obtain and hold		NL: (Comments): In our view there should be room at the MS level to exclude certain types of entities that by their legal nature pose little to no ML/TF risk.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
adequate, accurate and current beneficial ownership information.	adequate, accurate and current beneficial ownership information pursuant to Article 44.		ES: (Comments): ok DK: (Comments): DK: We still have concerns regarding Article 45(1) as for the wording “all corporate and other legal entities” as the Regulation will apply directly to the legal entities. The current wording will mean that non-profit associations such as sports clubs, scouts associations, knitting clubs will be covered by the BO-rules. These are types of legal entities where the registration of beneficial owners will be difficult for the entity. There will be a high risk of errors in the information. We consider that for such legal entities, CDD will be sufficient and proportionate. According to preamble 67 the widest possible range of legal entities and arrangements incorporated or created in the territory of Member States should be covered by beneficial ownership rules. We prefer that Member States is given the power to exempt certain legal entities.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Our drafting-proposal for this provision should be seen in the context of our proposal, as previously tabled, for AMLD Art. 10 allowing for Member States to exempt certain legal entities. DK drafting: 1. ~~All~~eCorporate and other legal entities incorporated in the Union <u>that are required to register beneficial owners in accordance with article 10(1) of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive]</u>, shall obtain and hold adequate, accurate and current beneficial ownership information pursuant to Article 44.
Legal entities shall provide, in addition to information about their legal owner(s), information on the beneficial owner(s) to obliged entities where the obliged entities are taking customer due	Legal entities shall provide, in addition to information about their legal owner(s), information on the beneficial owner(s) to obliged entities where the obliged entities are taking customer due		ES: (Comments): ok

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
diligence measures in accordance with Chapter III.	diligence measures in accordance with Chapter III.		
	1A. Beneficial ownership information shall be obtained and reported to the register referred to in Article 10 of Directive by the legal entity immediately after its creation. Immediately after any change of the information, and in any case no later than 14 calendar days following the change of the beneficial owner, the legal entity shall ensure that the information in the register is updated. The legal entity shall		SI: (Comments): We propose to delete the last sentence: ~~As a minimum, such verification shall be performed annually.~~ Such an obligation poses a huge administrative burden on legal entities and their supervisor which is disproportionate to its added value. NL: (Comments): We do not agree with annual verification. This would provide too be quite burdensome while many entities rarely change their BO's. Also, it is already required to keep the information up-to-date. Text suggestion: 1A. Beneficial ownership information shall be obtained and reported to the register referred to in Article 10 of Directive by the legal entity immediately after its creation. Immediately after any change of the information, and in any case no later than 14 calendar days following the change of the beneficial owner, the legal entity shall ensure that the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	regularly verify that it holds updated information over its beneficial ownership. As a minimum, such verification shall be performed annually.		information in the register is updated. In order to comply with this obligation the legal entity shall regularly verify that it holds updated information over its beneficial ownership. As a minimum, such verification shall be performed annually EE: (Comments): EE Comment. We strongly welcome the wording of this section and would prefer not to see it changed. AT: (Comments): <u>We strongly support the obligation to verify the information on a yearly basis.</u> <u>We strictly object a 14-day time limit.</u> Our experience shows that with regard to international ownership structures it will not be possible to get a proof of existence and ownership of all intermediary entities within 14 days. Therefore, we suggest to extend this period to 28 days. Otherwise quality of beneficial owner data will be dramatically reduced in beneficial owner registers. For these reasons in the FATF Draft Guidance on Beneficial Ownership (R.24), page 26, no 70 it is recommended to update the information within a reasonable period (e.g. within one month). EL: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			1A. Beneficial ownership information shall be obtained and reported to the register referred to in Article 10 of Directive by the legal entity immediately after its creation. Immediately after any change of the information, and in any case no later than 14 30 calendar days following the change of the beneficial owner, the legal entity shall ensure that the information in the register is updated. The legal entity shall regularly verify that it holds updated information over its beneficial ownership. As a minimum, such verification shall be performed annually. FR: (Comments): This paragraph seems overly prescriptive and rigid: a period of one-month could be foreseen for the legal entity to communicate the BO information to the entity in charge of the registry following either the creation of the legal person or any change / update in BO information. The possibility for applying a derogatory longer deadline should also be foreseen here, to cater for the instances namely whereby the BO is a foreign natural person and that a chain of entities is involved. National law could envisage a mechanism for the application of the derogatory deadline (e.g. placing a request with a court or the entity in charge of the register).

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			ES: (Comments): ok FI: (Comments): On the obligation to report the BO information according to article 45 1A, we would like to know, if there is leeway on the rule of “immediately after it’s creation”. At the moment this information is required nationally when the legal entity is established, so not in effect “immeadiately after”. DK: (Comments): DK: We agree to the suggested wording on submitting beneficial ownership information immediately after creation. This is very useful in terms of control. In the Register it is possible to make a hard rule on registration if not all necessary information is provided. We also agree to the registration of changes no later than 14 calendar days. Furthermore we can support the requirement for an annual review of the information.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			However, it is unclear whether the wording “verification” entails a registration obligation of the annual verification have been performed or whether registration is required only if there are changes in the BO-information. Registration only when changes in BO information is preferable. BG: (Comments): We agree with the proposed amendment. Namely the legal entity shall ensure that the information in the register is updated. We are in favour that legal entities perform annual verifications and shall ensure that the information in the register is regularly updated. DE: (Comments): On the 14 day period: Article 45 (1A) states that beneficial ownership information must be obtained within 14 calendar days from the creation of legal entities/arrangements. Such a time period could be too short, especially when it comes to multi layered companies in third countries or small associations or foundations which are run by unpaid volunteers On the annual verification of BO-information: The annual verification of BO information will result in a massive additional burden, not only

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			for legal entities, but mostly for the transparency register, that has to ensure compliance with such a provision, if we read Art. 10 para 9 AMLD correctly. In view of the large number of legal entities required to register in Germany (more than 2 million) and the unknown number of additional legal entities required to register under Art. 48 AMLR, a significant effort for legal entities as well as a significant enforcement effort would be expected on the part of the transparency registry, which would have to monitor compliance. Especially in the case of registered associations, which often serve voluntary and non-profit purposes (local bowling or hiking club), and non-profit foundations an annual update seems disproportionate. We would therefore suggest exempting registered associations and non-profit foundations from the annual update requirement and restricting the obligation of annual updates to other legal entities with higher risk. LT: (Comments): We have some doubts that general requirement for legal entities should be set forth in AMLR, as it applies only for OE. Setting general requirement should be left to national legislation.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			MT: (Comments): MT reiterates its previous comments that one should remove the term ‘immediately’ from the second sentence in order to eliminate the presumption that such term, within the context of reporting BO information to the Register after the creation of the legal entity, can be interpreted to mean ‘up to 14 calendar days’. Additionally MT proposes that the term ‘calendar days’ is changed to ‘working days’. The same comment applies to Article 46 1A. Proposed amendments are as follows: <i>Beneficial ownership information shall be obtained and reported to the register referred to in Article 10 of Directive by the legal entity immediately after its creation. ~~Immediately~~ After any change of the beneficial ownership information, and in any case no later than 14 ~~calendar~~ working days following the change of the beneficial owner, the legal entity shall ensure that the information in the register is updated.</i>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
The beneficial owner(s) of corporate or other legal entities shall provide those entities with all the information necessary for the corporate or other legal entity.	1B. The beneficial owner(s) of corporate or other legal entities shall provide those entities with all the information and documentation necessary for the corporate or other legal entity to comply with the requirements of this Chapter. The same cooperation shall be provided by those persons and, in the case of legal arrangements, their trustees, who are the links that mediate indirect ownership or control.		AT: (Comments): This obligation should also apply to legal owners. Otherwise it will not be possible to follow the chain of participations from the legal entity to the beneficial owner, when the <u>beneficial owner is not known.</u> Drafting suggestion: <i>1B. The legal and beneficial owner(s) of corporate or other legal entities shall provide those entities with all the information and documentation necessary for the corporate or other legal entity to comply with the requirements of this Chapter. The same cooperation shall be provided by those persons and, in the case of legal arrangements, their trustees, who are the links that mediate indirect ownership or control.</i> ES: (Comments): ok DK: (Comments): DK: We agree to the suggested amendments regarding the providing of information in every level of the ownership chain.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			MT: (Comments): With reference to the sentence stating that ‘the same cooperation shall be provided by those persons and, in the case of legal arrangements, their trustees, who are the links that mediate indirect ownership or control’ – MT does not find that this provides any additional purpose since the very same information should already be provided for under point (d) of Article 44(1).
2. Where, after having exhausted all possible means of identification pursuant to Articles 42 and 43, no person is identified as beneficial owner, or where there is any doubt that the person(s) identified is the beneficial owner(s), the corporate or other legal entities shall keep records of the actions taken	2. Where, after having exhausted all possible means of identification pursuant to Articles 42 ~~and 43~~ , no person is identified as beneficial owner, or where there is ~~any~~ doubt substantial and justified uncertainty on the part of the corporate entity that the person(s) identified is the beneficial owner(s),		IT: (Comments): As for the element of “doubt”, we recognize the PCY’s attempt to improve the wording of article 45(2) so as to limit the application of the residual clause only in cases where objective uncertainties exist. However, we are still concerned that the wording might encourage the use of the residual clause by legal entities with a cascading effect on obliged entities efforts in the CDD context. Therefore, we suggest to reintroduce the wording contained in article 3(6)(a)(ii) of the AMLD “and provided there are no grounds for suspicion” to further limit and caution against the reliance on such provision. DK:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
in order to identify their beneficial owner(s).	the corporate or other legal entities shall keep records of the actions taken in order to identify their beneficial owner(s) pursuant to Articles 42.		(Comments): DK: We find that Article 42a should be included. DK drafting: 2. Where, after having exhausted all possible means of identification pursuant to Articles 42 and 42a ~~and 43~~, no person is identified as beneficial owner, or where there is ~~any doubt~~ substantial and justified uncertainty on the part of the corporate entity that the person(s) identified is the beneficial owner(s), the corporate or other legal entities shall keep records of the actions taken in order to identify their beneficial owner(s) pursuant to Articles 42 or 42a. BG: (Comments): We would like further clarification on the possible circumstances that would constitute “substantial and justified uncertainty” under Art. 45 (2) so that practice that keeps the beneficial owners hidden to be avoided.
3. In the cases referred to in paragraph 2, when	3. In the cases referred to in paragraph 2, when providing		NL: (Comments): We are not in favor of legal entities <i>registering</i> a justification in the BO-register in case no

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
providing beneficial ownership information in accordance with Article 16 of this Regulation and Article 10 of Directive [please insert reference – proposal for 6 th Anti-Money Laundering Directive - COM/2021/423 final], corporate or other legal entities shall provide the following:	beneficial ownership information in accordance with Article 16 of this Regulation and Article 10 of Directive [please insert reference – proposal for 6 th Anti-Money Laundering Directive - COM/2021/423 final], corporate or other legal entities shall provide the following:		beneficial owner could be identified and verified. While we understand the intent, this would in practice be an additional burden specifically for entities that often have no BO's, and are generally less professional and not well funded. Such as charity foundations, sports associations and local organizations. ES: (Comments): ok DE: (Comments): In cases where no beneficial owner exists, no beneficial owner can be identified, or doubts exist regarding the beneficial owner's identity and a fictitious beneficial owner must therefore be named, Article 45(3) states that legal entities must provide a "statement, accompanied by a justification" that no beneficial owner could be identified. This statement must be entered into the transparency register and thus, it is presumed, also be made available for inspection. In our understanding of this rule, the entities in charge of registers have no obligation to verify this statement unless there is evidence or reasonable doubt that the statement is false. This

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			should be clarified in Art. 10 (2) of the AML-DIR.
(a) a statement, accompanied by a justification, that there is no beneficial owner or that the beneficial owner(s) could not be identified and verified;	(a) a statement, ~~accompanied by a justification,~~ that there is no beneficial owner or that the beneficial owner(s) could not be identified and verified; accompanied by a justification as to why it was not possible to identify the beneficial owner in accordance with Article 42 and what constitutes uncertainty about the ascertained information;		ES: (Comments): ok DK: (Comments): DK: We suggest that the provided statement and justification are accompanied with documentation on the attempts made to identify the beneficial owners. Furthermore Article 42a should be included. DK drafting: (a) a statement, ~~accompanied by a justification,~~ that there is no beneficial owner or that the beneficial owner(s) could not be identified and verified; accompanied by a justification as to why it was not possible to identify the beneficial owner in accordance with Articles 42 or 42a and what constitutes uncertainty about the ascertained information <u>and</u> documentation on the attempts made to identify the beneficial owner(s);

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			BG: (Comments): We support the amendment, and to be in accordance with the whole text, we propose the following: (a) a statement that there is no beneficial owner or that the beneficial owner(s) could not be identified and verified; accompanied by a justification as to why it was not possible to <u>identify or verify</u> the beneficial owner in accordance with Article 42 and what constitutes uncertainty about the ascertained information; DE: (Comments): We welcome the clarification on what exactly the justification has to entail. From our perspective there can only be two reasons why a legal entity has no beneficial owner: This can either be due to dispersed ownership or due to the inability to identify the ultimate beneficial owner. The justification should therefore be restricted to give one of the two reasons. due
(b) the details on the natural person(s) who hold the position of senior managing official(s) in the	(b) the details on the natural person(s) who hold the position of senior managing official(s) in the corporate or		NL: (Comments): In practice we see diverging approaches as to which senior manager to 'designate' if there are no BO's, or whether to designate <i>all</i> senior managers/members of the board. We much

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
corporate or legal entity equivalent to the information required under Article 44(1), point (a).	legal entity equivalent to the information required under Article 44(1), point (a).		prefer the latter approach as it provides clarity and also prevent unnecessary discrepancy reports to the BO-register when the senior manager registered in the BO-register is not the same one as identified by an OE. Text suggestion: (b) the details on the all natural person(s) who hold the position of senior managing official(s) in the corporate or legal entity equivalent to the information required under Article 44(1), point (a). SE: (Comments): As we understand article 42, this article is applicable to swedish non-profit organizations (the word is not fully comparable with FATF's definition of NPO, but is still the best word to describe this form of association). Sweden understands the wish for registering, as also an NPO can be used for money laundering and financing of terrorism. However, for many of these NPOs there is no beneficial owner and in Sweden, this means that these legal entities are not required to register. According to the proposal the NPOs must register information according to article 45 paragraph 3, which will result in an administrative burden. It can be questioned if it is proportionate and efficient. Registration of senior management may also result in political, cultural and religious opinions being divulged as such opinions may be obvious if a person is connected with a NPO, for example

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			if the NPO is a church. We believe that it is problematic that the state in this way can force someone to divulge such information to the state. It is important to protect freedom of thought, conscience and religion, as well as freedom of assembly and of association. We therefore oppose the proposal in these respects and would like NPO:s to be exempted from 45.3 (a) and (b). To be clear, our proposal would mean that, in the case that there is a BO, he or she will still be required in the register. ES: (Comments): ok DK: (Comments): DK: Article 45(3)(b) should refer to Article 2(28) and (41) in AMLR. DK drafting: b) the details on the natural person(s) who hold the position of senior managing official(s) <u>in accordance with Article 2(28) and 41) of this Regulation</u> in the corporate or <u>other</u> legal entity equivalent to the information required under Article 44(1), point (a).

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	For the purpose of this Article, ‘senior management officials’ shall mean natural persons who are executive members of the board of directors as well as the natural persons who exercise executive functions within a corporate entity and are responsible, and accountable to the management body, for the day-to-day management of the institution.		HR: (Comments): HR is of a view that a definition of a senior management officials’ for the purpose of this Article is too broad and that only <i>natural persons who are executive members of the board of directors</i> should be included in the subject definition. IT: (Comments): We would prefer senior managers to be always considered as beneficial owners, even in cases where they are identified as a last resort measure. In fact, admitting that in some cases there is no beneficial owner might in our view lead to: a) possible loopholes, since the fact that senior managing officials would not bear any of the possible consequences of being qualified as beneficial owners might incentivize the use of this residual clause; b) confusion, since senior managers might in some cases be substantial beneficial owners (e.g. in the cases where they exercise control through other means) and in others not. In any case, if senior managers are not to be considered as beneficial owners, but rather as a formal substitute of BOs, we do not understand

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			why the relevant definition should only point to members exercising executive functions. ES: (Comments): ok DK: (Comments): DK: We do not find it necessary to insert a definition on senior management officials as the definition follows from Article 2(28), (40) to (42). However, Article 45(3)(b) in AMLR and Article 10(3)(b) in AMLD6 should refer to Article 2(28) and (41) in AMLR. DK drafting: ~~For the purpose of this Article, ‘senior management officials’ shall mean natural persons who are executive members of the board of directors as well as the natural persons who exercise executive functions within a corporate entity and are responsible, and accountable to the management body, for the day-to-day management of the institution.~~ BG: (Comments): We support the proposed definition of senior managing officials.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			MT: (Comments): MT disagrees with this proposed definition, as under FATF Guidance on Transparency and BO, specifically Paragraphs 33(e) and (f), natural persons who may exercise control through positions held within a legal person <i>include non-executive officials</i>. MT feels that the definition of senior managing officials should therefore be amended to include such persons. Para 33(e) and (f) provide the following: Natural persons who may exercise control through positions held within a legal person: e) The natural person(s) responsible for strategic decisions that fundamentally effect the business practices or general direction of the legal person. Depending on the legal person and the country's laws, directors may or may not take an active role in exercising control over the affairs of the entity, but identification of the directors may still provide useful information. However, information on directors may be of limited value if a country allows for nominee directors acting on behalf of unidentified interests. f) The natural person(s) who exercises executive control over the daily or regular affairs of the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			legal person through a senior management position, such as a chief executive officer (CEO), chief financial officer (CFO), managing or executive director, or president. The natural person(s) who has significant authority over a legal person's financial relationships (including with financial institutions that hold accounts on behalf of a legal person) and the ongoing financial affairs of the legal person.
4. Legal entities shall make the information collected pursuant to this Article available, upon request and without delay, to competent authorities.	4. Legal entities shall make the information collected pursuant to this Article available, upon request and without delay, to competent authorities.		IT: (Comments): Legal entities under this article are “All corporate and other legal entities incorporated in the Union”, i.e. also entities which are not obliged to comply with AML requirements, whereas “competent authorities” are always entrusted with AML tasks and competences. Does this mean that the latter shall have the power to request and obtain information on the beneficial ownership also to entities which do not fall under their AML supervision/competences? ES: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			ok
5. The information referred to in paragraph 4 shall be maintained for five years after the date on which the companies are dissolved or otherwise ceases to exist, whether by persons designated by the entity to retain the documents, or by administrators or liquidators or other persons involved in the dissolution of the entity. The identity and contact details of the person responsible for retaining the information shall be reported to the registers referred to in Article 10 of Directive	5. The information referred to in paragraph 4 shall be maintained for five years after the date on which the companies are dissolved or otherwise ceases to exist, whether by persons designated by the entity to retain the documents, or by administrators or liquidators or other persons involved in the dissolution of the entity. The identity and contact details of the person responsible for retaining the information shall be reported to the registers referred to in Article 10 of Directive		ES: (Comments): ok DK: (Comments): DK: Member States should be able to determine under the directive who is to be responsible for obtaining the beneficial ownership information. In Denmark, the management is responsible for obtaining the beneficial ownership information and can be held responsible if they fail to obtain the beneficial ownership information. If a person, other than the management, is responsible for obtaining the information, it is our concern, that a possible strawman can be reported as the person responsible for obtaining the beneficial ownership information, which would make it impossible for the competent authority to carry out checks to verify the beneficial owners. Furthermore, we are concerned that the reporting of the identity and contact details of the person responsible for retaining the information will not have the desired effect and will therefore be

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
<i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final].</i>	[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final].		unnecessarily burdensome and time consuming for both entities as well as authorities. DK drafting: 5. The information referred to in paragraph 4 shall be maintained for five years after the date on which the companies are dissolved or otherwise ceases to exist, ~~whether by persons designated by the entity to retain the documents, or by administrators or liquidators or other persons involved in the dissolution of the entity.~~ <u>Member States shall determine who can be responsible for obtaining the beneficial ownership information.</u> The identity and contact details of the person responsible for retaining the information shall be reported to the registers referred to in Article 10 of Directive ~~[please insert reference – proposal for 6th Anti-Money Laundering Directive – COM/2021/423 final].~~ DE: (Comments): Article 45(5) sentence 2 states that the identity of the person responsible for retaining beneficial ownership information at the legal entity must be reported to the transparency register. We request that the provision states more precisely which persons are meant here. It is conceivable that multiple such offices/positions exist within companies, and/or that companies avail themselves of external assistance – e.g.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			from lawyers, tax advisors, authorised representatives, service providers, etc. – to identify beneficial owners. Furthermore, it is unclear whether detailed information on such persons is to be made available in the transparency register.
<i>Article 46</i>	<i>Article 46</i>		
Trustees obligations	Trustees obligations		DK: (Comments): DK: As trusts and similar legal arrangements cannot be created according to Danish law only foreign trusts and similar legal arrangements must register beneficial owners in Denmark. We would like to point out that we find it difficult to ensure adequate, accurate and current BO information when not having legal capacity to sanction a foreign trust.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
1. Trustees of any express trust administered in a Member State and persons holding an equivalent position in a similar legal arrangement shall obtain and hold adequate, accurate and current beneficial ownership information regarding the legal arrangement. Such information shall be maintained for five years after their involvement with the express trust or similar legal arrangement ceases.	1. Trustees of any express trust administered in a Member State, or who reside in a Member State, and persons holding an equivalent position in a similar ~~legal~~ arrangement shall obtain and hold adequate, accurate and current beneficial ownership information as defined under Article 44 regarding the legal arrangement. Such information shall be maintained for five years after their involvement with the express trust or similar legal arrangement ceases to exist.		IE: (Comments): Why has the word “legal” been deleted? MT: (Comments): MT is suggesting the following wording to capture also trustees who are legal persons (which in the case of Malta are the vast majority): “Trustees of any express trust administered in a Member State, or who reside or are established in a Member State...”

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	1A. Beneficial ownership information shall be obtained and reported to the register referred to in Article 10 of Directive by the trustee or the person holding an equivalent position in a similar legal arrangement immediately after the creation of the trust or similar legal arrangements. Immediately after any change of the information, and in any case no later than 14 calendar days following the change of the beneficial owner, the trustee or the person holding an equivalent		EL: (Comments): 1A. Beneficial ownership information shall be obtained and reported to the register referred to in Article 10 of Directive by the trustee or the person holding an equivalent position in a similar legal arrangement immediately after the creation of the trust or similar legal arrangements. Immediately after any change of the information, and in any case no later than 14 30 calendar days following the change of the beneficial owner, the trustee or the person holding an equivalent position in a similar legal arrangement shall ensure that the information in the register is updated. The trustee or the person holding an equivalent position shall regularly verify that they hold updated information over the beneficial ownership of the legal arrangement. As a minimum, such verification shall be performed annually. DE: (Comments): Cf. our comment concerning Article 45 (1A). The 14-day time period could be too short. MT: (Comments): MT proposes the following amendments:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	position in a similar legal arrangement shall ensure that the information in the register is updated. The trustee or the person holding an equivalent position shall regularly verify that they hold updated information over the beneficial ownership of the legal arrangement. As a minimum, such verification shall be performed annually.		<i>Beneficial ownership information shall be obtained and reported to the register referred to in Article 10 of Directive by the trustee or the person holding an equivalent position in a similar legal arrangement immediately after the creation of the trust or similar legal arrangements. ~~Immediately~~ After any change of the beneficial ownership information, and in any case no later than 14 ~~calendar~~ working days following the change of the beneficial owner, the legal entity shall ensure that the information in the register is updated.</i>
	1B. The beneficial owner(s) of an express trust or similar legal arrangement shall provide trustee with all the information and		IE: (Comments): This paragraph is not necessary. It is repeating what is already in para 3 below MT: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	documentation necessary for the trustee to comply with the requirements of this Chapter. The same cooperation shall be provided by those persons and, in the case of legal arrangements, their trustees, who are the links that mediate indirect ownership or control.		Since the definition of beneficial owners of a trust/legal arrangement comprises of all the parties to the trust this may raise some complexity to implement for beneficiaries who may not be aware of the trust or yet entitled to benefit.
2. The persons referred to in paragraph 1 shall disclose their status and provide the information on the beneficial owner(s) to obliged entities when the obliged entities are taking customer due diligence	2. The persons referred to in paragraph 1 shall disclose their status and provide the information on the beneficial owner(s) to obliged entities when the obliged entities are taking customer due		MT: (Comments): MT notes that in the context of a trust/legal arrangement presumably it would be the trustee who is always dealing with the obliged entity on behalf of the trust and therefore it might be difficult to extend application to <u>all</u> the beneficial owners of the trust.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
measures in accordance with Chapter III.	diligence measures in accordance with Chapter III.		
3. The beneficial owner(s) of an express trust or similar legal arrangement other than the trustee or person holding an equivalent position, shall provide the trustee or person holding an equivalent position in a similar legal arrangement with all the information necessary to comply with the requirements of this Chapter.	3. The beneficial owner(s) of an express trust or similar legal arrangement other than the trustee or person holding an equivalent position, shall provide the trustee or person holding an equivalent position in a similar legal arrangement with all the information necessary to comply with the requirements of this Chapter.		MT: (Comments): MT makes reference to its previous comment in relation to extending this obligation to beneficiaries who are not aware of the trust or entitled to benefit.
4. Trustees of an express trust and persons holding an equivalent position in a similar legal	4. Trustees of an express trust and persons holding an equivalent position in a similar legal arrangement		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
arrangement shall make the information collected pursuant to this Article available, upon request and without delay, to competent authorities.	shall make the information collected pursuant to this Article available, upon request and without delay, to competent authorities.		
<i>Article 47</i>	<i>Article 47</i>		
Nominees obligations	Nominees obligations		
Nominee shareholders and nominee directors of a corporate or other legal entities shall maintain adequate, accurate and current information on the identity of their nominator and the nominator's beneficial owner(s) and	Nominee shareholders and nominee directors of a corporate or other legal entities shall maintain adequate, accurate and current information on the identity of their nominator and the nominator's beneficial owner(s) and		BG: (Comments): Unlike some jurisdictions, the Bulgarian law does not recognize a legal relationship between the Ultimate Beneficial Owners (UBOs)/nominators and a Nominee Director /Nominee Shareholder that will have an effect to the public or third parties. According to the Bulgarian law, the appointed director/shareholder whose name is on public records, has a a full independent control over the company. The company director may /according to the law/ buy and sell assets, operate company bank accounts even against the will of the UBO

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
disclose them, as well as their status, to the corporate or other legal entities. Corporate or other legal entities shall report this information to the registers set up pursuant to Article 10 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> .	disclose them, as well as their status, to the corporate or other legal entities. Corporate or other legal entities shall report this information to the registers set up pursuant to Article 10 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> .		and these actions will be absolutely legal and irreversible. The nominee owner of the company shares can at any time dismiss the company director and appoint another person. So we recommend the following text: Nominee shareholders and nominee directors of a corporate or other legal entities shall maintain adequate, accurate and current information on the identity of their nominator and the nominator's beneficial owner(s) and disclose them, as well as their status, to the corporate or other legal entities. Corporate or other legal entities shall report this information to the registers set up pursuant to Article 10 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i>, except for the cases in which the national law does not recognize the figures of nominee shareholders and nominee directors. DE: (Comments): Members of, e.g. the supervisory or advisory board, would be burdened with an extraordinary obligation, for which they may have no resources to fulfil such obligation. Rather, such a duty can only be imposed on members of the executive board or governing body. The drafting suggestion is to specify the duty on the latter. <u>Drafting suggestion:</u>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Nominee shareholders and nominee executive directors of a corporate or other legal entities shall maintain adequate, accurate and current information on the identity of their nominator and the nominator's beneficial owner(s) and disclose them, as well as their status, to the corporate or other legal entities. Corporate or other legal entities shall report this information to the registers set up pursuant to Article 10 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final].
Corporate and other legal entities shall also report this information to obliged entities when the obliged entities are taking customer due diligence measures in accordance with Chapter III.	Corporate and other legal entities shall also report this information to obliged entities when the obliged entities are taking customer due diligence measures in accordance with Chapter III.		ES: (Comments): ok

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
<i>Article 48</i>	<i>Article 48</i>		
Foreign legal entities and arrangements	Foreign legal entities and arrangements		LV: (Comments): We were also a bit confused by this Article, which provides for the registration of BOs operating outside the EU. Here we share the same concerns expressed by Germany in Italy.
1. Beneficial ownership information of legal entities incorporated outside the Union or of express trusts or similar legal arrangements administered outside the Union shall be held in the central register referred to in Article 10 of Directive <i>[please insert reference – proposal for 6th Anti-Money</i>	1. Beneficial ownership information of legal entities incorporated outside the Union or of express trusts or similar legal arrangements administered outside the Union shall be held in the central register referred to in Article 10 of Directive <i>[please insert reference – proposal for 6th Anti-Money</i>		IT: (Comments): We believe that the scope of relevant foreign entities should be reduced in line with the FATF standard. For this reason, we suggest that paragraph 1 point (a) should refer only to business relationship which: (a) are entered into with legal entities incorporated outside the Union in countries identified as high-risk third countries in a delegated act adopted by the Commission in accordance with Art. 23(2) and 60 or of express trusts or similar legal arrangements administered outside the Union in countries identified as high-risk third countries in a delegated act adopted by the Commission in accordance with Art. 23(2) and 60;

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
<i>Laundering Directive - COM/2021/423 final</i>] set up by the Member State where such entities or trustees of express trusts or persons holding equivalent positions in similar legal arrangements:	<i>Laundering Directive - COM/2021/423 final</i>] set up by the Member State where such entities or trustees of express trusts or persons holding equivalent positions in similar legal arrangements:		(b) exceed the volume of EUR [1 000 000] or the equivalent in national currency; or (c) intermediate a transaction or linked transactions of a value that exceeds or is expected to exceed EUR [1 000 000] or the equivalent in national currency. Moreover, the mandatory acquisition of a proof of registration provided in art. 19(4) should, in our view, be accompanied by an explicit prohibition from entering into business with foreign entities that have not registered their BO information. In any case, this would not guarantee that the reported information is accurate considering that entities in charge of EU registers are not, and cannot be, granted with enforcement powers vis-à-vis foreign entities. FR: (Comments): It should be made clearer in the Regulation whether the requirement to hold information on BO of foreign entities in the central register of Member States shall apply for future business relations (i.e. from the entry into force of the Regulation onwards) or should apply retroactively to all existing business relations preferably with an adjustment period foreseen in the Regulation. ES:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			(Comments): ok FI: (Comments): We are unsure on how the obligation to report BO information of foreign legal entities and arrangements would work in practice and have many questions. Who is the registrar? Which register will hold the information? In Finland BO information is registered in the Trade Register, which holds information on businesses registered in Finland. Should there be a separate register for BO's on foreign legal entities and arrangements? Who provides the information to the register: The foreign legal entity, the obliged entity or someone else? According to our national legislation, the legal entity must provide BO information to the register and there is no option to provide this information through someone else. Could this obligation form a barrier for trade or result to derisking? Would there be sanctions if the information is not provided and to whom would the sanctions be directed? For how long would this information be stored in the register and how would it be updated? What

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			about situations where the obliged entity would no longer be in business with the foreign legal entity? LV: (Comments):
(a) enter into a business relationship with an obliged entity;	(a) enter into a business relationship with an obliged entity;	„Business relationship“ is already defined.	SE: (Comments): We are afraid that this will result in an administrative burden that might not be proportionate in relation to what can be expected to be achieved with this information. It will also be difficult to ensure that such information is registered. Who is responsible to register the information? Is it the legal entity incorporated outside the Union? What happens if it is not done? The strike-off of legal entities that fail to comply is hard to use in these cases. ES: (Comments): ok DE: (Comments): We welcome the obligation to legal entities acquiring real estates in the EU to provide BO information to transparency registries. This

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			corresponds to an existing requirement under German law established to address the risk intensive real estate business. Additionally, under Article 48(1)(a), the beneficial ownership information of legal entities incorporated outside the EU must be held in the transparency register if and as soon as they enter into a business relationship with a domestic obliged entity. Since no estimates (that we have asked for in the previous comments) seem to be available, we would suggest to redraft the provision as follows for it to be more risk-based and more comparable to lit b) and lit c): Article 48 AMLR – Foreign legal entities and arrangements 1. Beneficial ownership information of legal entities incorporated outside the Union or of express trusts or similar legal arrangements administered outside the Union shall be held in the central register referred to in Article 10 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final] set up by the Member State where such entities or trustees of express trusts or persons holding equivalent positions in similar legal arrangements:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			(a) enter into a business relationship that fulfils the requirement set out in paragraph 2 with an obliged entity; (b) acquire real estate in their territory; (c) are awarded a public procurement for goods, services or concessions. 2. The business relationship under paragraph 1 point (a) must (a) be entered into with legal entities incorporated outside the Union in countries identified as high-risk third countries in a delegated act adopted by the Commission in accordance with Art. 23(2) and 60 or of express trusts or similar legal arrangements administered outside the Union in countries identified as high-risk third countries in a delegated act adopted by the Commission in accordance with Art. 23(2) and 60; (b) exceed the volume of EUR [1 000 000] or the equivalent in national currency; or

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			(c) intermediate a transaction or linked transactions of a value that exceeds or is expected to exceed EUR [1 000 000] or the equivalent in national currency. 3. Where the legal entity, the trustee of the express trust or the person holding an equivalent position in a similar legal arrangement enters into multiple business relationships within the meaning of paragraph 1 point (a) or acquires real estate in different Member States, a certificate of proof of registration of the beneficial ownership information in a central register held by one Member State shall be considered as sufficient proof of registration. MT: (Comments): It does not appear that the amendments to the definition of ‘business relationship’ have really addressed the issues raised in the context of determining whether a non-EU trustee has

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			established a ‘business relationship’ in an EU Member State, particularly in the context of trustees holding shares or interests in a company/legal person in an EU MS. Does the holding of shares amount to the establishment of a business relationship? And if a CSP (obliged entity) is engaged for the purposes of providing registered office services to such a company, would that be a business relationship between the company and the CSP or the trustee and the CSP?
(b) acquire real estate in their territory.	(b) acquire real estate in their territory.		ES: (Comments): ok MT: (Comments): (b) acquire real estate in their territory; or

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	(c) are awarded a public procurement for goods, services or concessions.		ES: (Comments): ok DE: (Comments): We support this amendment.
2. Where the legal entity, the trustee of the express trust or the person holding an equivalent position in a similar legal arrangement enters into multiple business relationships or acquires real estate in different Member States, a certificate of proof of registration of the beneficial ownership information in a central register held by one Member	2. Where the legal entity, the trustee of the express trust or the person holding an equivalent position in a similar legal arrangement enters into multiple business relationships or acquires real estate in different Member States, a certificate of proof of registration of the beneficial ownership information in a central register held by one Member		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
State shall be considered as sufficient proof of registration.	State shall be considered as sufficient proof of registration.		
<i>Article 49</i>	<i>Article 49</i>		
Sanctions	Sanctions		
Member States shall lay down the rules on sanctions applicable to infringements of the provisions of this Chapter and shall take all measures necessary to ensure that they are implemented. The sanctions provided for must be effective, proportionate and dissuasive.	1. Member States shall lay down the rules on sanctions applicable to infringements breaches of the provisions of this Chapter and shall take all measures necessary to ensure that they are implemented. The sanctions provided for must be effective, proportionate and dissuasive.		DK: (Comments): DK: We find it important that Member States shall ensure that breaches are subject to effective, proportionate and dissuasive measures or sanctions as in the current AMLD5. We can agree to a list of possible sanctioning mechanism as long as Member States can decide on sanctions in accordance with national law.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Member States shall notify those rules on sanctions by <i>[6 months after the entry into force of this Regulation]</i> to the Commission together with their legal basis and shall notify it without delay of any subsequent amendment affecting them.	Member States shall notify those rules on sanctions by <i>[6 months after the entry into force of this Regulation]</i> to the Commission together with their legal basis and shall notify it without delay of any subsequent amendment affecting them.		ES: (Comments): ok
	2. Examples of sanctions that can be imposed pursuant to paragraph 1 are:		NL: (Comments): No need to insert examples into regulation. Strongly suggest to drop. The necessity of the paragraph is completely unclear, and reads like a consideration. The legal status of ‘examples’ in a regulation is very unclear and might only cause more confusion. Are these preferable above other sanctions/breaches that are not mentioned? EL: (Comments): 2. Examples of Sanctions that can be imposed pursuant to paragraph 1 are <i>indicatively</i>:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			ES: (Comments): ok IE: (Comments): This is better suited to a recital LT: (Comments): We can support the proposed examples of sanctions. However, we believe that, there should be more clarifications on the mechanism and periods, for instance regarding the strike-off of legal entity. MT: (Comments): MT feels that it should be clarified that these examples serve as guidelines and should not be deemed to be neither compulsory nor exhaustive.
	(a) fines for outdated, inaccurate or incorrect data,		EL: (Comments): (a) fines for outdated, inaccurate or incorrect data, based on the total annual net turnover for corporate entities or the number of employees for other than corporate entities. BG: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			We consider the fines to be the most appropriate sanction mechanism. It is possible to adopt an approach under which there is a minimal threshold of the fine (for example 5000 € or other appropriate sum) and the Member States have the right to define a higher amount of fine considering the specific circumstances.
	(b) the strike-off of legal entities that fail to comply with the obligation to hold beneficial ownership information or to submit beneficial ownership information within a given time limit,		AT: (Comments): <u>We consider the strike-off of legal entities without proper liquidation procedure as problematic.</u> The legal person may only be considered as terminated when the assets of the company are distributed to the creditors. We strongly recommend to analyse the consequences on the creditors of this measure in detail. If there is no additional research we would prefer the deletion. DE: (Comments): We understand this to be an example that has no binding effect on what measures Member States choose to introduce at national level.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	(c) fines for beneficial owners and other persons who fail to cooperate under Articles 45(1b) and 46(1b), or		AT: (Comments): <u>We strongly recommend to introduce sanctions for nominees and nominators who do not fulfill their duties according to Art. 45.</u> We suggest the following drafting: (c) fines for beneficial owners and other persons who fail to cooperate under Articles 45(1b) and 46(1b) and for Nominee shareholders, nominee directors and nominators who fail to comply with their obligations according to Article 47, or
	(d) private law consequences (prohibition of the payment of profits, prohibition of the exercise of voting rights).		
CHAPTER V REPORTING OBLIGATIONS			

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Article 50	Article 50	The Presidency would like to note that CSM Working Group of FIU Platform recently identified concerns regarding this Article, and works on adjustments that would fit the needs of FIUs. It is therefore probable that this Article will be adjusted in the next compromise text.	IT: (Comments): <i>Under a reservation of further scrutiny, based also on the analyses underway in the FIUs' Working Group within the Platform, we are pasting below comments and suggestions for improving the text.</i> BE: (Comments): We reserve our comments until the CSM Working Group of FIU Platform provides the adjusted text. In this instance we refer to our comments made in the PCY FR compromise proposal (29 July 2022) which remain valid. Please refer to our clear drafting proposal. As we understood from the CZ Pcy conclusion on this article the Pcy will work on adjustments and will distribute the text for comments for the next compromise text to be discussed in October or November. Until then we reserve our comments on this article and invite the Pcy to take note of our comments on this article in the comments made in the PCY FR compromise proposal (29 July 2022).

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			LV: (Comments): Latvia agrees on Joint document by CSM WG on Art. 50 AMLR – Reporting obligations – 2022.20.05. DE: (Comments): Against the background that the Presidency is working on a redraft of Art. 50 AMLR, we reserve further comments/might need to adapt our current comments.
			BE: (Comments): Redrafting proposal : Reporting of suspicions to the FIU
Reporting of suspicious transactions	Reporting of suspicious transactions		BE: (Comments): 1. Obligated entities shall report to the FIU all suspicions of money laundering and terrorist financing, including on attempted transactions. Obligated entities, and, where applicable, their directors and employees, shall cooperate fully by :

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			1.1 Promptly reporting to the FIU, on their own initiative, where the obliged entity knows, suspects or has reasonable grounds to suspect that : a) funds or other assets, regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist financing, or that b) it possesses knowledge of any other fact that raises suspicion of money laundering or terrorist financing, and 1.2 By responding to requests by the FIU for additional information in the cases under 1.1, and, 1.3 By providing the FIU directly, at its request, with all necessary information. For the purposes of 1.1 to 1.3 obliged entities shall reply to a request for information by the FIU within 5 days or

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			a different deadline set by the FIU taking account of the urgency and the complexity of the the query.
			BE: (Comments): Proposals: Change title of art 50 to “reporting of suspicions to the FIU” because the reference to “transactions” is too limited. As a consequence of moving these provisions on the reporting obligation from the Directive to the regulation and the harmonized rulebook it is important to cast this obligation in all its relevant details. In lack of national implementation, the provision should be self-standing so as not give rise to loopholes or different interpretations or applications. Having clarity and completeness in a properly broad and harmonized provision is also necessary to provide both reporting entities and FIUs with an appropriate legal basis for processing information, including under a data protection perspective and, at the same time, to set

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			an adequate framework for the implementation provisions that will be prepared by AMLA on this point. The following aspects, in particular, should be completed and clarified. Consequently, the proposed redrafting searches to respond to these aims by simplifying and differentiating the different components that comprises the full cooperation by the OE towards the FIU under three different points 1.1 to 1.3. <u>“Suspicious transactions”</u>. The scope of the obligation to report should not be narrowly confined to “transactions”: suspicions may arise in a wide range of different circumstances in the course of the diversified businesses carried out by the multiple categories of obliged entities. It is essential that STRs are filed when the facts, activities or information pertaining to suspicions are not only related to “transactions”. Ultimately, suspicions of ML, underlining criminal activities or TF have to be reported to the FIU whatever the source and regardless

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			of there being a “transaction” (even attempted). So the provision in par. 1 should be broadened accordingly. “Funds”. Along the same lines, while article 50(1) sets out a broad scope for the notion of “suspicion” to reported, article 50(2) seems to unduly limit this reporting obligation only to cases where there are “funds” involved. It is important, instead, to clarify that the reports are due, in cases of suspicion, not only in relation to “funds” but taking account of any relevant underlying fact, circumstance or information (concerning, e.g., the customer, his/her/its counterparts, other subjects or activities involved). Furthermore, while the reference to “funds” (dating back to the first AMLD) may have been appropriate when the scope of the obligation was limited to financial institutions, it certainly inappropriate now to encompass non-financial activities subject to the same obligation. + include also assets to cover crypto-assets

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<u>Deadlines for replying to requests</u> : Setting “ex ante” a mandatory deadline in the regulation, applicable in all cases for obliged entities to reply to requests for information by the FIU does not seem appropriate and can be detrimental. In fact, on one hand the upper limit of 5 days may not be sufficient for gathering necessary information, especially in complex cases that involve several transactions and business relationships or where data has to be collected across multiple entities in the group or in the cases of outsourcing arrangements (see article 20) or, finally, when it comes to certain categories of obliged entities which transmit to the FIU such information through self-regulatory bodies. In these cases, the need to comply with the deadline would lead to poor information gathering and response to the FIU. On the other hand, having a 5 days timespan for providing feedback to the FIU, or even 24 hours, would be counterproductive when the reaction has to be prompt and quicker, typically in cases where transactions are in progress and decisions on postponement or seizure have to be taken immediately. Moreover, the consequences of the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			failure to comply with the deadlines are unclear; in case of delay, would any sanction be applicable to the obliged entity? A suitable alternative to the proposed and excessively rigid one-size-fits-all approach of a threshold set in primary provisions would be to foresee that the FIU, when and to the extent appropriate, set a deadline for replies taking account of circumstances (e.g. complexity, urgency). This solution would allow for the necessary flexibility and could be assisted by administrative sanctions.
1. Obligated entities shall report to the FIU all suspicious transactions, including attempted transactions.	1. Obligated entities shall report to the FIU all suspicious transactions, including attempted transactions.		IT: (Comments): <i>DRAFTING</i> <i>1. Obligated entities shall report to the FIU all suspicions of money laundering, its predicate offences or terrorist financing.</i> BE: (Comments): See drafting above FR: (Comments): This sentence is made obsolete by the following paragraph as we suggest it. We consider that the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			scope of reporting obligations should be fully defined in the following paragraph. ~~<i>Obligated entities shall report to the FIU all suspicious transactions, including attempted transactions.</i>~~ LV: (Comments): Pursuant to Article 50 para 1 and para 2 obligation to report to the FIU applies only to suspicious transactions and attempted suspicious transactions where funds are already involved. We consider that entities should be required to report not only suspicious transactions, but also suspicious activities. Obligated entities should be obliged to provide information on each of them, both for a suspicious transaction involving funds or transactions attempts and for any activity that has raised suspicion. Taking into account the scope of the obligation to report should not be narrowly confined to “transactions”: suspicions may arise in a wide range of different circumstances in the course of the diversified businesses carried out by the multiple categories of obliged entities. It is essential that STRs are filed when the facts, activities or information pertaining to suspicions are not only related to “transactions”. Ultimately, suspicions of ML, predicate offences or TF have

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			to be reported to the FIU whatever the source and regardless of there being a “transaction” (even attempted). The provision in par. 1 should be broadened accordingly. Also, taking into account long lasting discussions during <i>Moneyval</i> evaluation processes, Latvia proposes amendments on Article 50: <i>“Obliged entities shall report to the FIU all suspicions of money laundering, predicate offences and terrorist financing, including on attempted transactions.”</i> DE: (Comments): <u>Explanation for drafting suggestion:</u> As sentences 1 and 2 of the proposal indicate, there are two cases where reports have to be made to the FIU: a) suspicious transactions, b) suspicious funds. However, the proposal does not clarify the relation of sentences 1 and 2; moreover, the relation of paragraph1 and the new paragraph 2 is unclear. Our drafting suggestion attempts to remedy that. It also attempts to avoid some other redundancies. 1. Obligated entities, and where applicable their directors and employees, shall report on their own initiative to the FIU a) all transactions suspected of being linked to money laundering or terrorism financing, including attempted transactions,

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			b) any case where funds, regardless of the amount involved, connected to a transaction, a business relationship or a transaction intermediated by the obliged entity between its client and a third party are suspected to be the proceeds of criminal activity or to be related to terrorist financing. For the purposes of points (a) and (b), obliged entities shall provide the FIU directly, at its request, with all necessary information, within 5 days of such a request. In justified and urgent cases, FIUs shall be able to shorten such a deadline to 24 hours.
Obliged entities, and, where applicable, their directors and employees, shall cooperate fully by promptly:	Obliged entities, and, where applicable, their directors and employees, shall cooperate fully by promptly:		IT: (Comments): <i>DRAFTING</i> <i>Obliged entities, and, where applicable, their directors and employees, shall cooperate fully by promptly:</i> FR: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Reporting obligations should not be limited to funds that are the proceeds of criminal activity, which would exclude, for example : ➤ A wire transfer conducted in the framework of CEO fraud, ➤ Purchases of drugs or child sexual abuse material. Funds, transactions and activities that are related to the commission of offences that could generate proceeds should also be reported. This is necessary for FIUs to detect and prevent the future laundering of such proceeds. This expansion of reporting obligations should be considered carefully, and limitations should be introduced to avoid the over-reporting of isolated offences that are of very limited interest to the FIU. Reporting obligations should remain proportional, and as such, a situation where obliged entities are required to deploy substantial resources to file useless reports should be avoided. We suggest the following structure, which distinguishes core reporting obligations (ML and TF) from reporting obligations on the commission of offences that could generate proceeds (but have not done so yet). This allows for targeted restrictions as proposed in the new paragraph 1b below.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<i>Obligated entities, and, where applicable, their directors and employees shall cooperate fully by promptly reporting to the FIU, on their own initiative, where the obliged entity knows, suspects or has reasonable grounds to suspect that funds, ~~regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist financing,~~ transactions or activities, including attempted transactions or activities, fulfill at least one of the following conditions:</i> <i>(a) they are related to terrorist financing or proceeds of criminal activity;</i> <i>(b) they are related to criminal activity where proceeds could be generated.</i> DE: (Comments): See drafting suggestion at para 1 sentence 1
(a) reporting to the FIU, on their own initiative, where the obliged entity knows, suspects or has reasonable grounds to	(a) reporting to the FIU, on their own initiative, where the obliged entity knows, suspects or has reasonable grounds to		NL: (Comments): We would like to make a drafting proposal. In this way, the article is more in line with the Dutch situation in which unusual transactions must be reported instead of suspicious transactions. We suggest to stipulate that the obliged entity knows or has reason to suspect

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
suspect that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist financing, and by responding to requests by the FIU for additional information in such cases;	suspect that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist financing, and by responding to requests by the FIU for additional information in such cases;		that transactions <u>can be</u> the proceeds of criminal activity or <u>can be</u> related to terrorist financing. IT: (Comments): DRAFTING <i>(a) reporting to the FIU, on their own initiative, where the obliged entity knows, suspects or has reasonable grounds to suspect that transactions or activities, including attempted transactions or activities, regardless of the amount involved, are related to proceeds-generating offences or terrorist financing;</i> COMMENTS The provision about “responding to requests by the FIU for additional information” duplicates lett. b); also, it would unduly limit the FIUs’ powers to request information only to cases where there has been a report and to information that are «additional» to such report. It is also in contrast with AMLD6 (articles 17(3) and 18(4)). We suggest to merge it into lett. b) and amend accordingly. While the current language is essentially unchanged since the first AMLD back in 1991, it is important to broaden up the scope of the obligation to report, along multiple lines.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			• Include non financial activities, as a consequence of the inclusion of DNFBPs into the scope • Enlarge the range of the duty to report beyond “funds” or “transactions” • Includes suspicions on all crimes that, actually or potentially, generate proceeds, both at the phases where such proceeds are or may be generated and at subsequent stages of use or employment. For example, the obligation should encompass cases where an obliged entity detects elements of potential predicate offences, without seeing specific proceeds and the related “laundering” yet; these cases are frequent and important: see the context of CEO fraud, purchases of drugs or child pornography. The reporting obligations should be extended in order to not only include the proceeds of criminal activity, but also funds, transactions and activities that could be related to the commission of an offence that could generate proceeds. This is current practice in several Member States, but is not clearly reflected in the regulation. <u>“Suspicious transactions”</u>. The scope of the obligation to report should not be narrowly confined to “transactions”: suspicions may arise in a wide range of different circumstances in the course of the diversified businesses carried out by

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			the multiple categories of obliged entities. It is essential that STRs are filed when the facts, activities or information pertaining to suspicions are not only related to “transactions”. Ultimately, suspicions of ML, predicate offences or TF have to be reported to the FIU whatever the source and regardless of there being a “transaction” (even attempted). The provision in par. 1 should be broadened accordingly. <u>“Funds”</u>. Along the same lines, while article 50(1) sets out a broad scope for the notion of “suspicion” to reported, article 50(2) seems to unduly limit this reporting obligation only to cases where there are “funds” involved. It is important, instead, to clarify that the reports are due, in cases of suspicion, not only in relation to “funds” but taking account of any relevant underlying fact, circumstance or information (concerning, e.g., the customer, his/her/its counterparts, other subjects or activities involved). Furthermore, while the reference to “funds” (dating back to the first AMLD) may have been appropriate when the scope of the obligation was limited to financial institutions, it certainly inappropriate now to encompass non financial activities subject to the same obligation. SE: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			We suggest a clarification on if “proceeds of criminal activity” also can encompass for example money that is paid to a commercial platform for illegal drug and that will obviously be subject to money laundering at a later stage? If no, we suggest a formulation that will encompass also such and similar situations. FR: (Comments): We suggest including responses to requests for information in a separate paragraph. Furthermore, in our opinion, the deadline applicable to obliged entities should be set by the FIU, as it is best placed to evaluate the level of urgency and complexity of the case. <i>1a. ~~(b)~~responding to Obligated entities shall reply to requests for information by the FIU by providing the FIU directly, at its request, with all necessary information.</i> <i>~~For the purposes of points (a) and (b), Obligated entities shall reply to a request for information by the FIU promptly, within the deadline set by the FIU, taking account of the urgency and the complexity of the query. 5 days. In justified and urgent cases, FIUs shall be able to shorten such a deadline to 24 hours.~~</i> LV: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Please see the explanation of FIU Latvia in Article 50 (1). Latvia proposes amendments: <i>“(a) reporting to the FIU, on their own initiative, where the obliged entity knows, suspects or has reasonable grounds to suspect that funds or activities, regardless of the amount, are related to proceeds of criminal activity or to terrorist financing, and by responding to requests by the FIU for additional information in such cases;”</i> DE: (Comments): See drafting suggestion at para 1 sentence 1 There should be a clear understanding that reporting obligations are limited to criminal activity that can constitute a predicate offense of money laundering. Despite the definition of criminal activity in Art. 2 para. 3 and the reference to Directive (EU) 2017/1371 there should be greater clarity in Art. 50 itself.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(b) providing the FIU directly, at its request, with all necessary information.	(b) providing the FIU directly, at its request, with all necessary information.		IT: (Comments): <i>DRAFTING</i> <i>(b) responding to requests for information by the FIU by providing the FIU directly, at its request, with all necessary information.</i> FR: (Comments): This paragraph would be made obsolete ~~<i>(b) — providing the FIU directly, at its request, with all necessary information.</i>~~
For the purposes of points (a) and (b), obliged entities shall reply to a request for information by the FIU within 5 days. In justified and urgent cases, FIUs shall be able to shorten such a deadline to 24 hours.	For the purposes of points (a) and (b), obliged entities shall reply to a request for information by the FIU within 5 days. In justified and urgent cases, FIUs shall be able to shorten such a deadline to 24 hours.		IT: (Comments): <i>DRAFTING</i> <i>For the purposes of point (b), obliged entities shall reply to a request for information by the FIU promptly, within the deadline that the FIU may impose taking account of the urgency and the complexity of the query.</i> <i>COMMENTS</i> <u>Deadlines for replying to requests.</u> Setting “ex ante” a mandatory deadline in the regulation, applicable in all cases for obliged entities to reply to requests for information by the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			FIU does not seem appropriate and can be detrimental. In fact, on one hand the upper limit of 5 days may not be sufficient for gathering necessary information, especially in complex cases that involve several transactions and business relationships or where data has to be collected across multiple entities in the group or in the cases of outsourcing arrangements (see article 20) or, finally, when it comes to certain categories of obliged entities which transmit to the FIU such information through self-regulatory bodies. In these cases, the need to comply with the deadline would lead to poor information gathering and response to the FIU. On the other hand, having a 5 days timespan for providing feedback to the FIU, or even 24 hours, would be counterproductive when the reaction has to be prompt and quicker, typically in cases where transactions are in progress and decisions on postponement or seizure have to be taken immediately. Moreover, the consequences of the failure to comply with the deadlines are unclear; in case of delay, would any sanction be applicable to the obliged entity? A suitable alternative to the proposed and excessively rigid one-size-fits-all approach of a threshold set in primary provisions would be to foresee that the FIU, when and to the extent appropriate, set a deadline for replies taking account of circumstances (e.g. complexity,

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			urgency). This solution would allow for the necessary flexibility and could be assisted by administrative sanctions. FR: (Comments): This paragraph would be made obsolete <i>For the purposes of points (a) and (b), obliged entities shall reply to a request for information by the FIU within 5 days. In justified and urgent cases, FIUs shall be able to shorten such a deadline to 24 hours.</i> DE: (Comments): See drafting suggestion at para 1 sentence 1. Of course the requested obliged entity should answer as soon as possible. But in order to provide a useful response quality should be more important than a deadline.
			FR: (Comments): See comments under article 50(1). The scope of reporting obligations should be expanded, but must remain proportional to its goals. Without restrictions, it would always include, for

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			example, isolated cases of insurance fraud or means of payment fraud, which are of very little interest to FIUs and could become a disproportionate burden for the compliance departments of obliged entities. This, in turn, would mean less time for obliged entities to file high quality STRs on relevant issues. Such a situation would be incompatible with a risk-based approach. As such, while including the commission of predicate offences in the scope is necessary in our opinion, it is paramount that Member States have the possibility to exclude some types of offences from reporting obligations in cases of duly justified low risk. As a safeguard, AMLA and the European Commission should be notified of such measures. <i>1b. In cases of duly justified low risk, Member States shall be able to restrict the scope of reporting obligations mentioned in paragraph 1, point b of this Article. Member States shall notify such restrictions to the Commission and AMLA within 6 months, accompanied by a justification of the money laundering and terrorist financing risks underpinning such decision. Within 6 months from that notification, the Commission, having consulted the Authority for anti-money laundering and countering the financing of</i>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<i>terrorism established by Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final] (AMLA)], shall issue a detailed opinion regarding whether the restriction envisaged is adequate to the level of risk identified.</i>
2. For the purposes of paragraph 1, obliged entities shall assess transactions identified pursuant to Article 20 as atypical in order to detect those that can be suspected of being linked to money laundering or terrorist financing.	2. For the purposes of paragraph 1, obliged entities shall assess transactions identified pursuant to Article 20 as atypical in order to detect those that can be suspected of being linked to money laundering or terrorist financing.		NL: (Comments): We would like to add “and its associated predicate offences” to the end of the first sentence of paragraph 2: <i>“For the purposes of paragraph 1, obliged entities shall assess transactions identified pursuant to Article 20 as atypical in order to detect those that can be suspected of being linked to money laundering, <u>associated predicate offences</u> or terrorist financing”.</i> IT: (Comments): DRAFTING <i>For the purposes of paragraph 1 point (a), obliged entities shall assess transactions or activities carried out by their customers on the basis of and against any relevant fact and information known to them or which they are in possession of, including any fact or information</i>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<i>obtained by their agents, distributors and other external collaborators.</i> <i>The grounds to suspect should be properly assessed, qualified and documented. Obligated entities shall keep records of the facts and circumstances considered, the anomalies detected, the decisions taken.</i> COMMENTS The proposed amendments aim to: - align this provision with par. 1 as proposed, in its broader reference to “activities” beyond “transactions, as far as the scope is concerned; - clarify that the suspicion should be assessed taking account of all relevant information - require that such assessment be properly motivated and documented, also in order to limit useless or merely “defensive” reporting. The notion of "atypical transaction" (which is mentioned only in recital 40 in relation to automated monitoring systems for certain obliged entities) and that of “suspicion” should be defined or better described. While this objective could be achieved mostly through appropriate guidance by AMLA, this provision in the AMLR could nonetheless be made more specific by referencing, as relevant factors, at least also the characteristics of the customer’s counterparts, the methods of execution of the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			transaction (e.g. the splitting of operations) indications (or lack thereof) on the origin of involved funds or assets. BE: (Comments): NBB: we suggest to define “atypical transactions”. FR: (Comments): We believe the scope of information on which STRs are based should be as broad as possible. The reference to Article 20 is, in any case, insufficient. See amendment below. 2. For the purposes of paragraph 1 ~~point (a)~~, obliged entities shall assess transactions or activities carried out by their customers on the basis of and against any relevant fact and information known to them or which they are in possession of, including any fact or information obtained by their agents, distributors and other external collaborators. ~~identified pursuant to Article 20 as atypical in order to detect those that can be suspected of being linked to money laundering or terrorist financing.~~ DE: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			To our understanding, reference should rather be made to Article 21 (Ongoing monitoring) than to Article 20 (Identification of purpose and nature of business relationship or transaction)
A suspicion is based on the characteristics of the customer, the size and nature of the transaction or activity, the link between several transactions or activities and any other circumstance known to the obliged entity, including the consistency of the transaction or activity with the risk profile of the client.	A suspicion is based on the characteristics of the customer, the size and nature of the transaction or activity, the link between several transactions or activities and any other circumstance known to the obliged entity, including the consistency of the transaction or activity with the risk profile of the client.		IT: (Comments): <i>DRAFTING</i> <i>A suspicion is based, for example, on the characteristics of the customer and his/her/its counterparts, the size, and nature and methods of execution of the transaction or activity, the link between several transactions or activities and any other circumstance known to the obliged entity, including the origin, the destination or the use of funds or assets and the unexplained inconsistency of the transaction or activity with the information collected in the framework of customer due diligence as defined in chapter 3 or any other relevant information.</i> COMMENTS These amendments are aimed to better qualify the notion of “grounds for suspicion” and the elements that should be part of the assessment. Particularly important is the focus on “origin and destination”, so as to cover the whole criminal

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			“cycle”, from predicate offences, to money laundering, to terrorist financing. BE: (Comments): NBB: This paragraph is confusing. It is not a suspicion that is based on these characteristics, but the atypical character of the funds, transactions or activities, which may lead to a suspicion. What is atypical is not always automatically suspicious. When an atypical transaction can also be qualified as suspicious, it must be reported. <u>These factors are the basis for the detection of atypical transactions.</u> Reporting entities are expected to refrain from reporting solely on the basis of context. The report must be justified by reasons or elements that make the funds or the transaction suspicious in the given concrete circumstances. An atypical transaction for which there is no justification or reasonable explanation is to be considered as suspicious. FR: (Comments): <u>TRACFIN Comments and proposal</u> We propose a more fleshed out description of what can constitute a suspicion, while leaving the necessary amount flexibility. <i>A suspicion is based on any fact or circumstance known to the obliged entity, including the characteristics of the customer</i>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<i>and his/her/its counterparts, the size, ~~and~~ nature and methods of execution of the transaction or activity, the link between several transactions or activities, ~~and any other circumstance known to the obliged entity,~~ including the origin, the destination or the use of funds or assets and the unexplained inconsistency of the transaction or activity with the information collected in the framework of customer due diligence as defined in chapter 3, or any other relevant information. ~~with the risk profile of the client.~~</i> DE: (Comments): The origin of funds is an important additional information that should be highlighted explicitly. <u>Drafting suggestion:</u> A suspicion is based on the characteristics of the customer, the size and nature of the transaction or activity, the link between several transactions or activities, the origin of funds and any other circumstance known to the obliged entity, including the consistency of the transaction or activity with the risk profile of the client.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
3. By <i>[two years after entry into force of this Regulation]</i> , AMLA shall develop draft implementing technical standards and submit them to the Commission for adoption. Those draft implementing technical standards shall specify the format to be used for the reporting of suspicious transactions pursuant to paragraph 1.	3. By <i>[two years after entry into force of this Regulation]</i> , AMLA shall develop draft implementing technical standards and submit them to the Commission for adoption. Those draft implementing technical standards shall specify the format to be used for the reporting of suspicious transactions pursuant to paragraph 1.		NL: (Comments): We would like to make a drafting proposal to paragraph 3. We would like to replace the wording “the format” to “minimum set of data”. IT: (Comments): COORDINATION WITH TFR It is important, as provided for the TFR itself, that the provisions in this latter be coordinated with those introduced subsequently with the other parts of the Package, notably through the AMLR. Article 18 of the TFR shall be amended as follows: “The crypto-asset service provider of the beneficiary shall take into account missing or incomplete information on the originator or the beneficiary as a factor when assessing whether a transfer of crypto assets, or any related transactions, is suspicious and whether it is to be reported to the FIU in accordance with Directive (EU) 2015/849 Regulation [insert references to the AMLR]. Article 18(d) of the TFR shall be amended as follows: “The intermediary crypto-asset service provider shall take into account missing or incomplete

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			information on the originator or the beneficiary as a factor when assessing whether a transfer of crypto assets, or any related transactions, is suspicious and whether it is to be reported to the FIU in accordance with Directive (EU) 2015/849 Regulation [insert references to the AMLR]. Article 30 of the TFR shall be amended as follows: (1) The AMLA ESAs shall issue guidelines addressed to the competent authorities and the payment service providers in accordance with Article 16 of Regulation (EU) No 1093/2010 on measures to be taken in accordance with this Regulation, in particular as regards the implementation of Articles 7, 8, 11 and 12 of this Regulation. By [12 months after entry into force of this Regulation], AMLA EBA shall issue guidelines addressed to the competent authorities and to the crypto-asset service providers on measures to be taken as regards the implementation of Articles 14, 15, 16, 17, 18a, 18b, 18c, 18d of this Regulation. (2) The AMLA EBA shall issue guidelines specifying technical aspects of the application of this Regulation to direct

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			debits as well as the measures to be taken by payment initiation service providers under this Regulation, taking into account their limited role in payment transactions. <i>The AMLA EBA shall issue guidelines, addressed to competent authorities, on the characteristics of a risk-based approach to supervision of crypto-asset service providers and the steps to be taken when conducting supervision on a risk-based basis. The AMLA EBA shall ensure a regular dialogue with stakeholders on the development of technical interoperable solutions with the view of facilitating the implementation of the requirements laid down in that Regulation.</i> FR: (Comments): In order to fit the profile of different Member States, we are of the opinion that reporting obligations should remain flexible. Instead of a “one-size fits all” template, a minimum set of data to be included in STRs it suggested. That would meet the objective to set the necessary standards of quality and diligence, with the aim of improving international cooperation between FIUs, without creating difficulties through a rigid form that may not be adapted to different jurisdictions. As follows :

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			3. By [two years after entry into force of this Regulation], AMLA shall develop draft implementing technical standards and submit them to the Commission for adoption. Those draft implementing technical standards shall specify the minimum set of data for the reporting format ~~to be used for the reporting of~~ suspicious transactions pursuant to paragraph 1. LV: (Comments): Many member states, and also Latvia uses goAML system. It should be pointed that the way in which the format is structured has a direct and significant impact on the IT data management systems that are used by reporting entities and the FIU to file, receive, analyse and disseminate STRs and related information. Thus, a certain level of flexibility should be maintained. We propose amendments in Article 50 (3): “3. By [two years after entry into force of this Regulation], AMLA shall develop draft implementing technical standards and submit them to the Commission for adoption. Those draft implementing technical standards shall specify the minimum set of data for the reporting

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<i>format of suspicious transactions pursuant to paragraph 1.”</i>
4. The Commission is empowered to adopt the implementing technical standards referred to in paragraph 3 of this Article in accordance with Article 42 of Regulation <i>[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]</i> .	4. The Commission is empowered to adopt the implementing technical standards referred to in paragraph 3 of this Article in accordance with Article 42 of Regulation <i>[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]</i> .		
5. AMLA shall issue and periodically update guidance on indicators of unusual or suspicious activity or behaviours.	5. AMLA shall issue and periodically update guidance on indicators of unusual or suspicious activity or behaviours.		IT: (Comments): <i>DRAFTING</i> 5. AMLA shall issue and periodically update guidance on indicators of unusual or suspicious activity or behaviours, without prejudice to the competence of the FIU for the formulation of

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<i>guidance or indicators in the light of the national specificities of the reporting entities.</i> COMMENTS Similar to the case of technical standards for the format of STRs (see paragraph 3), operational experience and knowledge on suspicious cases and the trends in STRs is an essential condition in order to be able to provide obliged entities with guidance on indicators of unusual or suspicious activities or behaviours. Of course, AMLA will neither receive nor analyse STRs. Therefore, the background for preparing “guidance on indicators” in support of reporting entities cannot but solely rely on FIUs’ experience and inputs. This is another area where the governance and decision making processes of AMLA should be such as to secure adequate direct participation of FIUs in the preparation of the relevant acts. Furthermore, the guidance set by AMLA at the EU level will be focused on common or cross-border elements and patterns and will not exhaust the range of phenomena and indicators that should be taken into consideration by obliged entities in their monitoring and reporting tasks. <u>It is therefore necessary to account for additional or complementary guidance that should be independently provided by FIUs in light of their local experience and of the features of the national reporting sectors. The widely differing</u>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<u>and evolving nature of DNFBPs and of their activities should be recalled here, as well as the associated necessity for tailored guidance at the local and sectoral level.</u> BE: (Comments): NBB: Do “guidance” differ from “guidelines” ? Within which deadline should the AMLA issue these “guidance” ? FR: (Comments): We believe FIU input through guidelines and indicators is, in any event, necessary for obliged entities to correctly fulfil their reporting obligations, and that should be mentioned here. 5. <i>AMLA shall issue and periodically update guidance on indicators of unusual or suspicious activity or behaviours, without prejudice to the competence of the FIU for the formulation of guidance or indicators in the light of the national specificities of the reporting entities.</i> DE: (Comments): We suggest the deletion of the words “unusual or” as it seems redundant and not necessary.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
6. The person appointed in accordance with Article 9(3) shall transmit the information referred to in paragraph 1 of this Article to the FIU of the Member State in whose territory the obliged entity transmitting the information is established.	6. The person appointed in accordance with Article 9(3) shall transmit the information referred to in paragraph 1 of this Article to the FIU of the Member State in whose territory the obliged entity transmitting the information is established.		
<i>Article 51</i>	<i>Article 51</i>		
Specific provisions for reporting of suspicious transactions by certain categories of obliged entities	Specific provisions for reporting of suspicious transactions by certain categories of obliged entities		

Table 2 of 3

Replies from: HR CY SK SI HU NL IT EE AT BE SE EL FR ES FI LV IE DK BG DE LT MT

Updated: 08/11/2022 16:19

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
1. By way of derogation from Article 50(1), Member States may allow obliged entities referred to in Article 3, point (3)(a), (b) and (d) to transmit the information referred to in Article 50(1) to a self-regulatory body designated by the Member State.	1. By way of derogation from Article 50(1), Member States may allow obliged entities referred to in Article 3, point (3)(a), (b) and (d) to transmit the information referred to in Article 50(1) to a self-regulatory body designated by the Member State.		
The designated self-regulatory body shall forward the information referred to in the first subparagraph to the FIU promptly and unfiltered.	The designated self-regulatory body shall forward the information referred to in the first subparagraph to the FIU promptly and unfiltered.		
2. Notaries, lawyers and other independent legal	2. Notaries, lawyers and other independent legal		BE: (Comments): BE : In Art 3 AMLR defining the scope of obliged entities includes now in point (a)

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
professionals, auditors, external accountants and tax advisors shall be exempted from the requirements laid down in Article 50(1) to the extent that such exemption relates to information that they receive from, or obtain on, one of their clients, in the course of ascertaining the legal position of their client, or performing their task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings, whether such information is received	professionals, auditors, external accountants and tax advisors shall be exempted from the requirements laid down in Article 50(1) to the extent that such exemption relates to information that they receive from, or obtain on, one of their clients, in the course of ascertaining the legal position of their client, or performing their task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings, whether such information is received		and (b) lawyers beside independent legal professions. So it is clear that a lawyer who provides solely tax advice (= art 3 (a) and not the other activities under (b) of assisting or representing his customer in financial or RE transactions) as his principal activity will also be covered under Art. 3 (a). As recital (9) states : There should, however, be exemptions from any obligation to report information obtained before, during or after judicial proceedings, or in the course of ascertaining the legal position of a client, which should be covered by the legal privilege. Therefore, legal advice should remain subject to the obligation of professional secrecy, ... A lawyer covered under Art 3 a) = solely render legal advice in tax matters - for which activities he will be covered will be under no obligation to report STRs because he is in the course of ascertaining the legal position of his client. Confirmation is sought about this in the recitals in order to avoid possible

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
or obtained before, during or after such proceedings.	or obtained before, during or after such proceedings.		various interpretations of the BAR Associations. DE: (Comments): There is a high vulnerability of legal professionals being misused for the purpose of laundering the proceeds of criminal activity when participating in the buying and selling of real property. Therefore, legal professionals should be subject to certain reporting obligations when providing these services. Due to high money laundering risks in the real estate sector and the important role that legal professionals play by giving legal advice and taking part in the processing of real estate transactions, exemptions from professional confidentiality obligations are justified with regard to these transactions. Such a restrictive definition is in line with FATF-recommendations (interpretive note 23 to REC 23 para 2) explicitly allowing for each country to determine the matters that would fall under the legal privilege. GER has adopted specific legislation to address the risks in the real estate sector in 2020. Specifically, requirements to rule-based reporting of suspicious transactions linked to real estate have also been extended to legal professionals and situations that could fall under

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			the legal privilege. For more information we refer to section 43 para 6 of the German Money Laundering act and the statutory instrument passed on this basis, GwGMeldV-Immobilien (https://www.gesetze-im-internet.de/imgwgmeldv/index.html).
			DE: (Comments): <u>Drafting suggestion:</u> The exemption set forth in paragraph 2 does not apply if the obliged professional has positive knowledge that the client is seeking legal advice for the purposes of money laundering or terrorist financing. Within the limits of Union Law, Member states may adopt or maintain with regard to specific transactions that involve a particular high risk to be used for money laundering or terrorist financing additional reporting obligations for the professionals listed in paragraph 2 to which the exemption set forth in paragraph 2 does not apply.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Article 52	Article 52		
Consent by FIU to the performance of a transaction	~~Consent by FIU to the performance of a transaction~~ Refraining from carrying out transactions	To reflect reactions on PCY Amendments 30 June 2022.	NL: (Comments): Please clarify this provision, more specifically in connection with article 20 AMLD VI (about the suspension of transactions). We would like to suggest to delete this article or to make clear that the FIU is not to give consent to each transaction for which an STR or UTR has been submitted by the reporting entity.
1. Obligated entities shall refrain from carrying out transactions which they know or suspect to be related to proceeds of criminal activity or to terrorist financing until they have completed the necessary action in accordance with	1. Obligated entities shall refrain from carrying out transactions which they know or suspect to be related to proceeds of criminal activity or to terrorist financing until they have completed the necessary action in accordance with		BE: (Comments): NBB: 1) We suggest an express link being made with article 20 of AMLD. 2) what if, as it may happen in practice, the FIU does not provide any answer/instructions to the OE? Can the OE proceed with the transactions after 15 days (or 5 days for holder of bank/payment accounts) from the notification? it is a frequent question from the OEs. DE: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Article 50(1), second subparagraph, point (a), and have complied with any further specific instructions from the FIU or other competent authority in accordance with the applicable law.	Article 50(1), second subparagraph, point (a), and have complied with any further specific instructions from the FIU or other competent authority in accordance with the applicable law.		In light of legal certainty and proportionality, GER deems it crucial that in Art. 52 AMLR a clear period of time should be established beyond which the obliged entity is authorised to execute a transaction, from the communication of the suspicious transaction report, if the FIU or other competent authorities have not taken any action. A deadline should at least be 3 working days. It should be expressed in working days, with Saturdays not being considered as working days. No processing is possible on public holidays or at weekends, so these periods should be excluded. Wording may be as follows: “A transaction about which a report has been filed may be executed at the earliest when (a) the FIU has informed the obliged entity that it consents to the execution, or (b) the third working day has elapsed after the day on which the report was sent without the execution of the transaction having been prohibited by the FIU or the public prosecution office.” In addition, it should be made clear that filing a report or the lack of an instruction by the FIU does not have any exculpatory effect with regard

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			to possible criminal relevance of the execution of the transaction.
2. Where refraining from carrying out transactions referred to in paragraph 1 is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected transaction, the obliged entities concerned shall inform the FIU immediately afterwards.	2. Where refraining from carrying out transactions referred to in paragraph 1 is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected transaction, the obliged entities concerned shall inform the FIU immediately afterwards.		
<i>Article 53</i>	<i>Article 53</i>		
Disclosure to FIU	Disclosure to FIU		
Disclosure of information in good faith by an obliged	Disclosure of information in good faith by an obliged		DE: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
entity or by an employee or director of such an obliged entity in accordance with Articles 50 and 51 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the obliged entity or its directors or employees in liability of any kind even in circumstances where they were not precisely aware of the underlying criminal activity and regardless of whether illegal activity actually occurred.	entity or by an employee or director of such an obliged entity in accordance with Articles 50 and 51 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the obliged entity or its directors or employees in liability of any kind even in circumstances where they were not precisely aware of the underlying criminal activity and regardless of whether illegal activity actually occurred.		We suggest to extend the protection of reporting entities to the cases mentioned in Article 52 – when an obliged entity refrains from carrying out a suspicious transactions, it must not be held liable for it (claims for compensation must be excluded).

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Article 54	Article 54		
Prohibition of disclosure	Prohibition of disclosure		
1. Obligated entities and their directors and employees shall not disclose to the customer concerned or to other third persons the fact that information is being, will be or has been transmitted in accordance with Article 50 or 51 or that a money laundering or terrorist financing analysis is being, or may be, carried out.	1. Obligated entities and their directors, and employees, or persons in a comparable position, including agents and distributors , shall not disclose to the customer concerned or to other third persons the fact that information is being, will be or has been transmitted in accordance with Article 50 or 51 or that a money laundering or terrorist financing analysis aimed at	To reflect reactions to PCY Amendments 30 June 2022.	IT: (Comments): DRAFTING 1. Obligated entities and their directors, and employees, or persons in a comparable position, including agents and distributors, shall not disclose to the customer concerned or to other third persons the fact that information is being, will be or has been transmitted in accordance with Article 50 or 51 or that a money laundering or terrorist financing analysis aimed at transmitting the information in accordance with Article 50 or performed by FIU ~~under Article 17(2) of [please insert reference – proposal for 6th Anti-Money Laundering Directive – COM/2021/423 final]~~ is being, or may be, carried out. COMMENTS As the triggers for the FIU's analyses are multiple and diversified, we propose to delete the reference to only article 17(2) of the AMLD. BE: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	transmitting the information in accordance with Article 50 or performed by FIU under Article 17(2) of [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final] is being, or may be, carried out.		NBB: In our view, depending on the scope of the outsourced AML/CFT tasks, the service provider acting according to an outsourcing arrangement with an obliged entity (cf. new art 6a) should not be considered as a “third person” in the meaning of Art. 54.1, since that service provider acts in the name and for the account of the concerned obliged entity. For the sake of clarity, this could be clearly stated in Art. 54. FR: (Comments): DK: (Comments): Agree
2. Paragraph 1 shall not apply to disclosures to competent authorities and to self-regulatory bodies where they perform supervisory functions, or to disclosure for the purposes of	2. Paragraph 1 shall not apply to disclosures to competent authorities and to self-regulatory bodies where they perform supervisory functions, or to disclosure for the purposes of		DK: (Comments): Agree

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
investigating and prosecuting money laundering, terrorist financing and other criminal activity.	investigating and prosecuting money laundering, terrorist financing and other criminal activity.		
3. By way of derogation from paragraph 1, disclosure may take place between the obliged entities that belong to the same group, or between those entities and their branches and subsidiaries established in third countries, provided that those branches and subsidiaries fully comply with the group-wide policies and procedures, including procedures for sharing information within the	3. By way of derogation from paragraph 1, disclosure may take place between the obliged entities that belong to the same group, or between those entities and their branches and subsidiaries established in third countries, provided that those branches and subsidiaries fully comply with the group-wide policies and procedures, including procedures for sharing information within the		BE: (Comments): NBB: This provision does not take into consideration the new obligations posed on “parent undertakings” that are not obliged entities : would it be allowed that an obliged entity discloses such information with its parent undertaking that is not an obliged entity ? Under which conditions ? DK: (Comments): Agree

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
group, in accordance with Article 13, and that the group-wide policies and procedures comply with the requirements set out in this Regulation.	group, in accordance with Article 13, and that the group-wide policies and procedures comply with the requirements set out in this Regulation.		
	3a. By way of derogation from paragraph 1, disclosure may take place between parties to partnership for information sharing in AML/CFT field, provided	This is to reflect appetite shown by MS on WP of 15.9.2022 to provide for leeway for obliged entities to share information covered by prohibition of disclosure under Article 54 within joint utilities (in this draft renamed to partnership for information sharing in AML/CFT field).	CY: (Comments): Please clarify what the reference to “parties to partnership” means and if it includes the cooperation/exchange of information of all types of obliged entities between them. If that is the case, we are concerned about possible negative implication on the analysis/investigation procedure and for this reason we consider that safeguards should be stricter. Additionally, the requirement for the consent of the FIU before such dissemination is necessary given the wide scope of derogation, however more flexibility should be given as this will entail heavy burden on the side of FIUs and there might be cases that the FIU might not be in a position at that specific time to provide a consent (ie. analysis might be at initial preliminary stage NL: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Suggest to explicitly insert that such a partnership is established under national law. <i>'disclosure may take place between parties to partnership for information sharing in AML/CFT field when established under national law, provided'</i> comparable with article 55 para 7. IT: (Comments): Please, see our written comments subsequent to the WP of 15 September 2022. We are still seeking clarifications on the background, rationale and timing for these proposed provisions that are not included in the AML Package and have not been submitted to related assessments and consultations. We have a different recollection on the outcomes of the September WP. A widespread reluctance or outright opposition were expressed by Member States to: a) providing for the possibility to introduce a notion of "joint utility" (here renamed "partnerships for information sharing" as a party with roles in information sharing and compliance matters, particularly on STRs/SARs; b) specifically, to include these entities within the perimeter of allowed information sharing on STRs (past or present). We maintain our objection to these proposals. We also reiterate the comments towards a more general and better thought-of approach to a more

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			effective exploitation of STR information and compliance with the reporting obligation. We formulate the following additional comments. In light of the new proposed definition, a “partnership for information sharing” would be described as a “formal cooperation between obliged entities with the purpose of supplementing compliance with this Regulation through cooperation and by sharing and processing data”. We note that: - the reference to “supplementing compliance” is unclear and seems to suggest that some compliance tasks might be taken out of the responsibilities of individual obliged entities, in potential conflict with the outsourcing regime and the prohibitions and limitations therein (article 6a); - the role of the “partnership” in facilitating the sharing of information between participating obliged entities would not add anything to what is already covered in paragraphs 4 and 5 of this same article, whereby obliged entities are allowed to share information among themselves (regardless of any partnership). This again shows that the role and purpose of such “partnerships” is at the same time vague, superfluous and likely to contrast the outsourcing regime.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			We strongly suggest to delete the amendments proposed as sensitive AML/CFT data, notably that on suspicions, should be treated under the strictest confidentiality and not be further shared. This is essential, at the same time, for the safeguard of individuals' rights and security (for example, in a data protection perspective) and for the integrity of analyses and investigations of potential illegal activities. In general, we are reluctant to broaden the scope and relax the conditions for the sharing of confidential information among obliged entities beyond what is currently foreseen in art. 54. While existing provisions allow for adequate intra-group and inter-institutional sharing, further instances of disclosures should be based on strong motivations and adequately scoped. We would like also to recall that any derogation to para. 1, taking into account the peculiar nature of information related to "suspicious" shall be considered with extreme caution and provided within a framework that ensure high standards and measures of confidentiality and carefully consider and ponder some "relaxation" in the light of clear and tangible benefits in terms of effectiveness. In this respect, while we see some merits in extending information sharing among obliged entities as regards the same customer or transaction, in order to favour a more effective

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			reporting, we should avoid inserting further general derogations under art. 54 that could lead to create “repositories” of information on STRs whose purpose is unclear as well as duplications in STR information reported to FIUs, with consequent burdens in terms of selection of new suspicions from those possibly already reported to the same FIUs by different obliged entities. Moreover, an obliged entity could be induced to report to the FIU all the information exchanged with another obliged entity, irrespective of an appropriate analysis and selection of suspicions, only in order to avoid any dispute of failure the STR obligation in comparison with the other obliged entity part of such exchange of information. AT: (Comments): We continue to think that partnerships for information should be subject to broad principles set out in level 1 and RTS by AMLA. National legislation seems much less effective and efficient, since criminals could circumvent any national partnership with a simple cross-border transfer. BE: (Comments): As already explained in the previous CWP meeting, we still think that the intention to introduce this additional exception raises two very substantive

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			and important issues that require to be further and carefully examined : a/ Is this additional exception compliant with the rules of the GDPR? We have real doubts about this, but this question should be asked to the EU data protection competent authority. b/ If this additional exception is provided by the AMLR, isn't there a very significant risk that it will leverage unreasonably the negative phenomenon of de-risking ? Indeed, it is to be reminded that it is sufficient that the OE has suspicions of ML/TF, not a proven and fully evidenced link with ML/TF, for being required to file an STR. If the envisaged mechanism is implemented, the consequence could consequently be that the concerned person of whom a transaction has been notified as suspicious to an FIU would face a real “banking ban”, while one cannot exclude that the reporting bank made a mistake in its assessment of the atypical transaction of the customer. Or that it filed an STR without real suspicion but for the sole purpose of self-

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			protection. Etc. And the person concerned risks not benefiting from any means to defend himself. We stay thus reserved at this point in regard of this new exception which can easily set aside the application of the exemptions to tipping off as foreseen under the other paragraphs of article 54 and leaves open the door for inappropriate evolutions, and the circumvention of the prohibition of the outsourcing of the reporting of STRs as agreed under new art 6a. We took note of the definition as provided in Art 2 (42) ‘partnership for information sharing in AML/CFT field’ means a formal cooperation established under national law between obliged entities with the purpose of supplementing compliance with this Regulation through cooperation and by sharing and processing data, in particular through the use of new technologies and artificial intelligence.” We can adhere to that definition. Since the derogations to par. 1- the prohibition of disclosure - are now considerably enlarged between OE and

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			more in particular as proposed under art 54.5 for OE in cases relating to the same transaction even if they are not from the same category of OE we wonder whether it still has added value to maintain the new par 3a. taking into account also the introduction of the exchange possibilities as proposed under the new art 55.5 and 55.7 where it is made possible to exchange information on CDD and for transaction monitoring. SE: (Comments): Overall, we strongly support that the regulation should make information sharing possible in public-private partnerships. It is important for us that the provisions do not become more restrictive than in the current compromise proposal. FR: (Comments): France reiterates its skepticism regarding the sharing of STRs between obliged entities even within a limited framework like that of partnership for information sharing. If that provision were to be maintained, it should be made clear that a,b,c and d are all required conditions. ES:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			(Comments): Please consider running a data protection impact assessment as part of the general impact assessment preceding the adoption of the legal act in line with article 39(10) EUDPR/35(10) GDPR. Also, please consider further concretion (e.g in the RTS to be defined by AMLA) on how these partnership would work in practice (roles and responsibilities of parties involved, exchange scenarios, potential recipients, categories of personal data, technical and organisational security measures) to ensure accuracy and confidentiality of the personal data. DK: (Comments): Agree DE: (Comments): We welcome the compromise in general. However, the wording should be aligned with Recital 42 and Art. 55 (7). We suggest to explicitly insert that such a partnership is established under national law, for instance as follows: "... disclosure may take place between parties to a partnership for information sharing in AML/CFT field when established under national law, provided ...". Otherwise, the provision could be misunderstood as a legal basis itself to establish joint utilities.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			LT: (Comments): Do we understand it correctly that the information sharing is not limited to “abnormalities or unusual circumstances”? The alignment with art. 55 (5) is not fully clear. MT: (Comments): In the context of derogations from non-disclosure rules within partnerships for the sharing of information, MT is of the opinion that such disclosure should, following approval of the FIU, only take place between compliance officers of the obliged entities involved.
	(a) it is necessary and proportionate for the prevention of money laundering and terrorist financing;	Point (a) limits the disclosure to cases where it has added value.	CY: (Comments): Please clarify what the reference to “parties to partnership” means and if it includes the cooperation/exchange of information of all types of obliged entities between them. If that is the case, we are concerned about possible negative implication on the analysis/investigation procedure and for this reason we consider that safeguards should be stricter. Additionally, the requirement for the consent of the FIU before

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			such dissemination is necessary given the wide scope of derogation, however more flexibility should be given as this will entail heavy burden on the side of FIUs and there might be cases that the FIU might not be in a position at that specific time to provide a consent (ie. analysis might be at initial preliminary stage). NL: (Comments): Agreed. IT: (Comments): It is unclear upon what elements this assessment would be done and by whom it would be done (obliged entities on a case by case basis? National authorities through “implementation”?). This provision would introduce discrepancies and fragmentations opposite to the nature and purposes of the AMLR as a directly applicable rulebook defined through a regulation (opposite to a directive). BE: (Comments): Point (a) intends to limit the disclosure to cases where it has added value. OK but How is this going to be determined ? Too vague and too large because you can include all possible information on the profile of the customer and the STRs made for him leading to the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			circumvention of the exclusion of the outsourcing the STR obligations. SE: (Comments): OK DK: (Comments): Agree
	(b) the partnership for information sharing in AML/CFT field implements appropriate measures to prevent further disclosure of such information by the participants;	Points (b) and (c) ensure that the partnership for information sharing in AML/CFT field is indeed confined.	NL: (Comments): Agreed. IT: (Comments): It is unclear what “measures” would be referred to here. This is also likely to result in discrepancies and fragmentations and does not lend itself to direct application, in contrast with the intent of the rulebook. SE: (Comments): OK DK: (Comments): Agree

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	(c) the measures under point b), as well as the responsibilities of each party to the partnership are duly documented; and	Points (b) and (c) ensure that the partnership for information sharing in AML/CFT field is indeed confined.	NL: (Comments): Agreed. SE: (Comments): OK DK: (Comments): Agree
	(d) the FIU has granted consent to the disclosure.	Point (d) ensures that the integrity of analysis by FIU is protected.	NL: (Comments): We think it is necessary to clarify that the FIU's consent with regard to the partnership concerns the general system – including the safeguards – within a partnership for the sharing of STRs and not each STR on a case by case basis as this would burden FIUs disproportionately. Drafting suggestion: (d) the <i>FIU</i> has granted consent to ~~the~~ disclosure within the partnership for informationsharing in AML/CFT field. IT: (Comments): These conditions (which we do not recall having discussed before) are inappropriate and unduly vague. Notably, there may not be any specific analysis underway at the time of the “sharing” while such sharing may remain nonetheless inappropriate.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			In addition it is unclear how this provision would be implemented (directly?) in cross-border situations where multiple FIUs are involved. BE: (Comments): According to the Pcy Point (d) ensures that the integrity of analysis by FIU is protected. But the integrity of the information shared within the partnership should be protected by the partnership itself. The partnership may not have any negative influence on the operational independence of the FIU or on their analysis capabilities. On what basis/criteria the FIU would give or refuse its consent ? case by case or general ? There may also be a lot of partnerships, and this could seriously entail the FIUs responsibilities towards the persons concerned by the disclosures. We do not agree to maintain point d) as it stands now. Clarification is needed. It is correct that already now Art 13 AMLR provides for the possibility to

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			exchange info on STRs sent to the FIUs within group structures, “unless otherwise instructed by the FIU”. There is a fundamental difference between having as FIU the possibility to refuse or give a negative instruction and the obligation of the FIU to grand consent or every and each disclosure. SE: (Comments): In our view, the integrity of the FIU does not need to be questioned if the partnership is <i>public and private</i>, and after consultations, our FIU does not see the need for this provision. According to our FIU and other prospective participants, as the Security Service, it will lead to less effective partnerships and possibly, a lot of administration for the FIU. At the same time, we can still see the need for safe guards on how a partnership is formed. Our proposal is to allow for more flexibility, by requiring either the consent of the FIU or the participation of a competent authority (law enforcement authority or a relevant supervisory authority): <u>(d) the FIU has granted consent to the disclosure or a competent authority takes part in the partnership.</u>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			If the requirement that the FIU needs to consent should be retained, we see a need for clarification that this only means consent to the general direction of a partnership and not every piece of information shared within. FR: (Comments): We would like to make it clear in the text that FIUs should give their consent for each partnership for information sharing. Indeed, FIUs will not have the means to review every shared suspicious transaction report in order to exercise their veto or not, let alone within a reasonable timeframe. In addition, in the case of cross-border partnerships all FIUs involved should give their consent for the project to go ahead FI: (Comments): We are unsure how the consent from FIU would work in practice. We don't think it could be possible to give the permission case by case due to resource issues, so this consent would need to be some kind of general consent. We would welcome more information about this. IE: (Comments): The Irish FIU does not operate on a consent basis

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			DK: (Comments): Denmark find it necessary to rephrase this as a general consent to the sharing – specifically the procedures for sharing of STRs – in these partnerships, and not a case-by-case consent. Maintaining a case-by-case consent would limit the efficiency achievable in partnerships significantly and burden FIUs disproportionately. The purpose of the proposed safeguard seem to be that FIUs can intervene if sharing is inappropriate for their investigations. It could be pre-sharing if investigations on specific customers is already ongoing, or post-sharing if investigations are initiated. We agree that disclosure should not compromise investigations, but the safeguard should be balanced with the purpose of introducing partnerships. We therefore suggest the following redrafting: <i>“the national competent authorities has granted consent to the procedures for disclosure of STRs within the partnership for information sharing in the AML/CFT field, including procedures for FIU intervention in the sharing of specific STRs, when necessary.”</i>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			DE: (Comments): We suggest to delete this requirement. It is not clear in what constellations the FIU should grant consensus. If a majority of member states want to keep this requirement, it should be clarified that it would not need to be consent on a case-by-case basis. Otherwise, this would likely severely restrict the effectiveness of information sharing in such a partnership.
4. By way of derogation from paragraph 1, disclosure may take place between the obliged entities as referred to in Article 3, point (3)(a) and (b), or entities from third countries which impose requirements equivalent to those laid down in this Regulation, who perform	4. By way of derogation from paragraph 1, disclosure may take place between the obliged entities as referred to in Article 3, point (3)(a) and (b), or entities from third countries which impose requirements equivalent to those laid down in this Regulation, who perform		DK: (Comments): Agree

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
their professional activities, whether as employees or not, within the same legal person or a larger structure to which the person belongs and which shares common ownership, management or compliance control, including networks or partnerships.	their professional activities, whether as employees or not, within the same legal person or a larger structure to which the person belongs and which shares common ownership, management or compliance control, including networks or partnerships.		
5. For obliged entities referred to in Article 3, points (1), (2), (3)(a) and (b), in cases relating to the same customer and the same transaction involving two or more obliged entities, and by way of derogation from paragraph 1, disclosure may	5. For obliged entities referred to in Article 3, points (1), (2), (3)(a) and (b), in cases relating to ~~the same customer and~~ the same transaction involving two or more obliged entities, and by way of derogation from paragraph 1, disclosure may	To reflect WP of 15.9.2022.	HR: (Comments): HR strongly supports Presidency's amendments. NL: (Comments): We prefer the wording: '...the same customer or the same transaction', but can agree with this wording as well. IT: (Comments): While we see merit in providing for a broader sharing, we are not comfortable with the current language and solution, based on the mere deletion of "the same customer". In fact, in order to

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
take place between the relevant obliged entities provided that they are located in the Union, or with entities in a third country which imposes requirements equivalent to those laid down in this Regulation, and that they are from the same category of obliged entities and are subject to professional secrecy and personal data protection requirements.	take place between the relevant obliged entities provided that they are located in the Union, or with entities in a third country which imposes requirements equivalent to those laid down in this Regulation, and that they ~~are from the same category of obliged entities~~ and are subject to professional secrecy and personal data protection requirements.		facilitate a broader and meaningful sharing, we need to cover both cases, that is: • There is one customer in common but multiple transactions (it is reasonable to allow the exchange of information on all such transactions); • There are multiple customers all linked to one individual transactions (it is reasonable to allow the exchange of information on all involved customers). Nevertheless, such extension should be also subject to strict confidentiality requirements. Together with the deletion of the constraint of “the same category of obliged entities”, this will result in a radically different framework where a vast amount of sensible information will circulate across a broad spectrum of firms and professionals. Importantly, the broader scope of sharing will be multiplied by its cross-border reach: entities of different nature will be able to share information with each other both nationally and cross-border. This new scenario will have to be attentively monitored to avoid undesired effects. We therefore suggest the following amendment: DRAFTING

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			5. <i>For obliged entities referred to in Article 3, points (1), (2), (3)(a) and (b), in cases relating to either the same customer or the same transaction involving two or more obliged entities, and by way of derogation from paragraph 1, disclosure may take place between the relevant obliged entities provided that they are located in the Union, or with entities in a third country which imposes requirements equivalent to those laid down in this Regulation, and that they ~~are from the same category of obliged entities and~~ are subject to professional secrecy, ~~and~~ personal data protection requirements and developed through secure channels ensuring strict confidentiality.</i> FR: (Comments): We are not opposed to removing the restriction on categories of obliged entities. However, we remain of the opinion that STRs should only be shared in cases involving the same transaction and the same customer, as is currently the case, in order to safeguard the confidentiality of STRs. ES: (Comments): Drafting suggestion: Please consider replacing 'personal data protection requirements' for 'Regulation 2016/679 compliant or, in the event

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			of third countries, essentially equivalent personal data protection requirements’. A mere mention to ‘personal data requirements’ might be too generic, especially given the fact that recipients could potentially be located outside the EEA. As Schrems II judgement mentions, there are countries whose data protection framework may impinge on the protection of personal data. In the event, this drafting suggestion is accepted, please consider including it also on art 13(1) and 14(1). DK: (Comments): Agree DE: (Comments): We prefer the wording: “... the same customer or the same transaction” but can agree with this wording as well.
			DE: (Comments): We propose to add the following para. in order to ensure that outsourcing of activities does not hamper the effectiveness of CDD:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			5a. By way of derogation from paragraph 1, disclosure may take place between an obliged entity and its agent or service provider to which it has outsourced activities related to customer identification and due diligence measures according to Chapter III of this Regulation or reporting as referred to in Articles 50 and 51 of this Regulation.
6. Where the obliged entities referred to in Article 3, point (3)(a) and (b), seek to dissuade a client from engaging in illegal activity, that shall not constitute disclosure within the meaning of paragraph 1.	6. Where the obliged entities referred to in Article 3, point (3)(a) and (b), seek to dissuade a client from engaging in illegal activity, that shall not constitute disclosure within the meaning of paragraph 1.		DK: (Comments): Agree
			DE: (Comments): We propose to add the following para. in order to allow AMLA to provide more details on these provisions in L2:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			7. By [2 years from the entry into force of this Regulation], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify the minimum standards for sharing of information between obliged entities subject to the exemptions in paragraph 3a, 4 and 5 in this Article.
CHAPTER VI	CHAPTER VI		
DATA PROTECTION AND RECORD-RETENTION	DATA PROTECTION AND RECORD-RETENTION		
Article 55	Article 55		IT: (Comments): SEE PREVIOUS COMMENTS
Processing of certain categories of personal data	Processing of ~~certain~~ categories of personal data	To reflect WP of 15.9.2022.	IE: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			We continue to object to the processing of certain categories of personal data and repeat again the views of the EDPA. Does this article include a provision to share information with consumer protection authorities. Does this include central banks as they have a consumer protection role? This is inappropriate. DK: (Comments): Agree
1. To the extent that it is strictly necessary for the purposes of preventing money laundering and terrorist financing, obliged entities may process special categories of personal data referred to in Article 9(1) of Regulation (EU) 2016/679 and personal data relating to	1. To the extent that it is ~~strictly~~ necessary for the purposes of preventing money laundering and terrorist financing, obliged entities may process special categories of personal data referred to in Article 9(1) of Regulation (EU) 2016/679 and personal data relating to	To reflect WP of 15.9.2022.	NL: (Comments): Agreed. SE: (Comments): We support this deletion. ES: (Comments): Drafting suggestion: For consistency with the GDPR, please consider including a cross reference to article 9(2)(g). DK: (Comments): Agree

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
criminal convictions and offences referred to in Article 10 of that Regulation subject to the safeguards provided for in paragraphs 2 and 3.	criminal convictions and offences referred to in Article 10 of that Regulation subject to the safeguards provided for in paragraphs 2 and 3.		DE: (Comments): From a data protection point of view, it should be explicitly defined, which special categories of data might be relevant in this regard. A vague reference to any kind of data, listed in Art. 9 GDPR, seems too far reaching. In addition, the safeguards in para 2 and 3 are not sufficient. Most of the safeguards already follow directly from the GDPR and do not have any added value in this regard. In its letter from 12 May 2022, the EDPB provides meaningful suggestions that should be taken into account (see Point 2.1 and 2.2). We support that the term “ strictly” has been deleted.
2. Obligated entities shall be able to process personal data covered by Article 9 of Regulation (EU) 2016/679 provided that:	2. Obligated entities shall be able to process personal data covered by Article 9 of Regulation (EU) 2016/679 provided that:		NL: (Comments): Agreed. DK: (Comments): Agree

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(a) obliged entities inform their customers or prospective customers that such categories of data may be processed for the purpose of complying with the requirements of this Regulation;	(a) obliged entities inform their customers or prospective customers that such categories of data may be processed for the purpose of complying with the requirements of this Regulation;		NL: (Comments): Agreed. DK: (Comments): Agree
(b) the data originate from reliable sources, are accurate and up-to-date;	(b) the data originate from reliable sources, are accurate and up-to-date;		NL: (Comments): Agreed. DK: (Comments): Agree
(c) the obliged entity adopts measures of a high level of security in accordance with Article 32 of Regulation (EU)	(c) the obliged entity adopts measures of a high level of security in accordance with Article 32 of Regulation (EU)		NL: (Comments): Agreed. ES: (Comments): Please note that GDPR Art 32 does not include any defined list of “high security measures”.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
2016/679, in particular in terms of confidentiality.	2016/679, in particular in terms of confidentiality.		Please consider developing harmonised minimum security standards via AMLA RTS. DK: (Comments): Agree
3. In addition to paragraph 2, obliged entities shall be able to process personal data covered by Article 10 of Regulation (EU) 2016/679 provided that:	3. In addition to paragraph 2, obliged entities shall be able to process personal data covered by Article 10 of Regulation (EU) 2016/679 provided that:		NL: (Comments): Agreed. DK: (Comments): Agree
(a) such personal data relate to money laundering, its predicate offences or terrorist financing;	(a) such personal data relate to money laundering, its predicate offences or terrorist financing;		NL: (Comments): Agreed. DK: (Comments): Agree

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(b) the obliged entities have procedures in place that allow the distinction, in the processing of such data, between allegations, investigations, proceedings and convictions, taking into account the fundamental right to a fair trial, the right of defence and the presumption of innocence.	(b) the obliged entities have procedures in place that allow the distinction, in the processing of such data, between allegations, investigations, proceedings and convictions, taking into account the fundamental right to a fair trial, the right of defence and the presumption of innocence.		NL: (Comments): Agreed. DK: (Comments): Agree
4. Personal data shall be processed by obliged entities on the basis of this Regulation only for the purposes of the prevention of money laundering and terrorist financing and shall not be further processed in a	4. Obliged entities may process Personal personal data ~~shall be processed by obliged entities~~ on the basis of this Regulation only for the purposes of the prevention of money laundering and terrorist	To reflect WP of 15.9.2022.	NL: (Comments): Agreed. IE: (Comments): Is the intention that customers will be specifically asked to provide this personal data? What is a customer refuses? Will entities then be able to use alternate sources of information such as social media? What about existing customers? Will they be asked retrospectively for this information? If not, could that not be seen as

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
way that is incompatible with those purposes. The processing of personal data on the basis of this Regulation for commercial purposes shall be prohibited.	~~financing and shall not be further processed in a way that is incompatible with those purposes. The processing of personal data on the basis of this Regulation for commercial purposes shall be prohibited.~~		discriminating between new and existing customers? DK: (Comments): Agree DE: (Comments): We explicitly welcome the proposed changes since they align with the joint non-paper of DNK, NLD and GER.
	5. Without prejudice to Article 54 and to the extent that is necessary and proportionate, obliged entities may share between each other personal data collected in the course of performing its customer due diligence obligations	To reflect WP of 15.9.2022. In order to ensure compliance with requirement stemming from paragraph 175 of Case C-311/18 (https://curia.europa.eu/juris/document/document.jsf?jsessionid=1F1B9F5A02EF4AC9DCFF8A7F030D5295?text=&docid=228677&pageIndex=0&docla	HR: (Comments): HR supports the amendment. NL: (Comments): Agreed. IT: (Comments): We maintain our comments on these proposed amendments to which we remain opposed. SEE PREVIOUS COMMENTS AT: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	under Chapter III, for the purposes of the prevention of money laundering and terrorist financing, provided that	ng=EN&mode=lst&dir=&occ=first&part=1&cid=1465211) and paragraph 81 of case C-419/14 (https://curia.europa.eu/juris/document/document.jsf?text=&docid=173127&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=61345), according to which legal basis which permits the interference with fundamental rights must itself define the scope of the limitation on the exercise of the right concerned, the provision was redrafted compared to what was tabled for that WP. The scope of the limitation on the exercise of the fundamental right under Article 8 of the Charter is as follows: sharing of personal data originating from CDD among obliged entities, where this data involve abnormalities or unusual	The amendments in Article 55 are still too far-reaching. In particular, the paragraphs 5-7 and the exchange of personal data between different obliged entities and automated data processing carried out thereafter, result in a huge pool of data that can subsequently be checked by automated data processing or AI. BE: (Comments): BE agrees to not criticize this article, seen our reservation on new art. 54.3a (see above) because it enables information sharing between and among OE <u>only on CDD and on transaction monitoring</u> and all this happens before the pre-suspicious stage and the safeguards are there. This information sharing can be done within a partnership = art 55.7 => there is a much closer and larger relationship between <u>the partners of the partnership</u> because they can exchange information on all their customers so exchange is not limited to customers on which they had alerts or abnormalities or unusual circumstances indicating money laundering or terrorist financing

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
		circumstances indicating ML/TF and where this sharing is necessary and proportionate for the purpose of prevention of ML/TF.	or without a partnership = art. 55.5 = > if no partnership then the info exchanged between the OE is limited to personal data of the customers involving abnormalities or unusual circumstances indicating money laundering or terrorist financing => according to the CZ PCY the exchange is limited to customers where there a alerts/pre-suspensions/abnormalities. + and in both cases this could even include information sharing on STRs if the exceptions to the tipping off between the concerned OE already apply under the amended article 54, without the new 3a. Therefore the reference to Without prejudice to Article 54 is important to maintain. So here BE can see the rationale of the information sharing : such sharing is relevant for the purposes of customer due diligence and money laundering and terrorist financing risk management : as we understand it

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			covers the identity and characteristics of the customer, its beneficial owners or the person on behalf of whom the customer acts, the nature and purpose of the business relationship and of the transactions. SE: (Comments): We support the majority of these proposals. FR: (Comments): This paragraph in particular raises serious concerns. It is our understanding that it would allow obliged entities to set up partnerships on the sole basis of this regulation, without any further framework defined at national level, and potentially without the involvement of public authorities. Should it be judged necessary to allow for information sharing to take place on a massive scale, it is essential that such exchanges take place within a framework defined and specified at national level, with the involvement and oversight of public competent authorities (FIUs, supervisory authorities, personal data protection authorities, etc.), in order to mitigate the numerous risks described in the general comments transmitted on Article 55. Such

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			involvement of public authorities is also in line with FATF publications on the matter. It should also be noted that within such partnerships, data pertaining to customers such as the defence industry, or other industries that are essential for European and national sovereignty, could be shared. These partnerships will thus be prime targets for hostile intelligence actions, making use of entities incorporated in the Union. The involvement of public authorities in these partnerships and the ability of Member States to contain their scope is necessary to mitigate risks related to European and national security and sovereignty. It should be clear that all data sharing on a large scale takes place through partnerships established pursuant to Article 55(7) and further defined in Article 55a – otherwise, these two provisions would have very little effect (partnerships could be set up on the sole basis of Article 54(4), with none of the safeguards offered by Article 55(7) and Article 55a). Such clarification can be achieved by deleting Article 55(5) altogether (this would be the preferred, clearer option), or amending it as follows :

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			5. Without prejudice to Article 54, and to the extent that is necessary and proportionate, and within the framework of partnerships established pursuant to Article 55(7) and defined in Article 55a, obliged entities may share between each other personal data collected in the course of performing its customer due diligence obligations under Chapter III, for the purposes of the prevention of money laundering and terrorist financing, provided that [...] DK: (Comments): Agree DE: (Comments): We explicitly welcome the proposed changes since they align with the joint non-paper of DNK, NLD and GER. LT: (Comments): The relation with requirements of art. 54 (3)(a) is not clear. MT: (Comments): MT's reading of the text is that information that has not been collected in the course of CDD

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			cannot be processed through automated decision making. Is there a reason for this specific exclusion?
	(a) personal data shared involve abnormalities or unusual circumstances indicating money laundering or terrorist financing;	Abnormalities under point (a) are to be subject to RTS under Article 55(8).	HR: (Comments): HR We support harmonized EU approach to definition of “<i>abnormalities or unusual circumstances</i>”. NL: (Comments): Agreed. Considering the difficulties some other MS expressed with introducing this new wording of abnormalities and unusual circumstances, the PSY could also consider referring to annex III instead. IT: (Comments): PASTE PREVIOUS COMMENTS We do not recall that these proposals have received an adequate endorsement in the WG. We also observe that it is an outright illogicity to relax confidentiality and data protection safeguards, so as to allow for wider sharing, in cases that are the most sensitive: information and data on “abnormalities” referred to individuals should benefit, instead, of greater protection.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			We are opposed to broaden up the scope of the allowed information sharing on “abnormalities”. AT: (Comments): In paragraph 5(a), the wording "involve abnormalities or unusual circumstances" is too vague. BE: (Comments): BE not in favor for including these new concepts since their meaning is not at all clear and until now not used in the directives. The CZ Pcy explains that it concerns here „pre-suspicions“ or alerts, and it does not concern STRs. This should be clarified, and clearly refer to alerts of a-typical transactions. SE: (Comments): We do not think that “abnormalities” should be specified in a RTS. FR: (Comments): Abnormalities or unusual circumstances are already in the realm of suspicion, as they already involve a substantial degree of subjective analysis, or analysis based on subjective criteria (whether than analysis is performed by a human or an algorithm). Only fully objective

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			information should be considered “pre-suspicion”. Furthermore, sharing information on “abnormal” or “unusual” transactions gives a strong hint that a suspicious transaction report might be filed, and could all but negate the prohibition of disclosure included in Article 54. Given the paramount importance of the confidentiality of the suspicious transaction report, we have strong concerns about how letter (a) is worded. If Article 55(5) remains, we suggest the following wording instead. ~~(a) personal data shared involve abnormalities or unusual circumstances indicating money laundering or terrorist financing;~~ (a) personal data shared is objective in nature, and does not include the results of analyses, whether such analyses are performed by humans or automated systems; DK: (Comments): Agree
	(b) obliged entities concerned inform their		NL: (Comments): Agreed. SE:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	customers or prospective customers that they may share their personal data under this paragraph;		(Comments): OK DK: (Comments): Agree
	(c) personal data shared originate from reliable sources, are accurate and up-to-date;	Point (c) is copy pasted from Article 55(1) dealing with processing of special categories of personal data under Article 9 GDPR, i.e. much more sensitive personal data.	NL: (Comments): Agreed. SE: (Comments): OK DK: (Comments): Agree
	(d) the obliged entities concerned adopt measures of a high level of security in accordance with Article 32 of Regulation (EU) 2016/679, in particular in terms of confidentiality;		NL: (Comments): Agreed. SE: (Comments): OK DK: (Comments): Agree

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	(e) each instance of sharing of personal data is recorded by obliged entities concerned; the records shall be made available to data protection authorities and consumer protection authorities upon request; and	Point (e) ensures that due audit trail is maintained.	HR: (Comments): HR supports the approach. SK: (Comments): We do not oppose the personal data sharing recorded by obliged entities on who shall have access to them, but we don't see a point to have data protection authorities and consumer protection authorities these data available upon request. It is more logical to make these data available to e.g. AML supervision authorities in each MS. NL: (Comments): Agreed. IT: (Comments): Access to STR and other sensitive AML/CFT information by DP and consumer protection authorities is entirely inappropriate under such broad terms. The proposed provision goes well beyond what is necessary for audit purposes; we fail to understand, also, what audit functions against AML data (and specifically STR data) may be carried out by consumer protection agencies. BE: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Could the reference to consumer protection authorities be clarified ? This should be deleted. Do not see why they should obtain this information. SE: (Comments): OK DK: (Comments): Agree
	(f) obliged entities sharing personal data implement appropriate measures for protection of justified interests of the customer concerned.	Point (f) is aimed at alleviating concerns regarding particularly undue de-risking.	NL: (Comments): Agreed. IT: (Comments): Unclear what “justified interests” would consist of. BE: (Comments): Ok but could be spelled out more clearly. DK: (Comments): Agree

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	Further processing of personal data under this paragraph for other, in particular commercial purposes, shall be prohibited.	Principle of finality.	NL: (Comments): Agreed. SE: (Comments): OK DK: (Comments): Agree
	6. Without prejudice to further obligations under Regulation (EU) 2016/679 and [please insert reference – EU-AI-Reg; COM(2021) 206 final], the processing of personal data according to paragraph 4 may be conducted by means of automated decision-making, including		NL: (Comments): Agreed. AT: (Comments): In paragraph 6 it should be ensured that the provisions of Article 22 of the GDPR are complied with in relation to automated data processing and profiling. Paragraph 6 currently seems to contradict the provisions of Article 22 of the GDPR. The exchange of personal data between different obliged entities and automated data processing carried out thereafter, result in a huge pool of data that can subsequently be checked by automated data processing or AI. The provisions are not specific enough, are too broad and far reaching.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	profiling within the meaning of Article 4(4) of Regulation (EU) 2016/679, or artificial-intelligence systems as defined in [please insert reference – Article 3 of Regulation EU-AI-Reg; COM(2021) 206 final], provided that the processing of personal data only comprises data which an obliged entity has collected in the course of performing its customer due diligence obligations under Chapter III, including, in particular, the ongoing monitoring pursuant to Article 20.		BE: (Comments): OK, subject to and in the understanding that “conducted by means of automated decision-making” the final decision to start, to end, or to apply HCDD or SCDD or the fying of an STR, still remains in the hands of the OE => OE may not become an empty box working without brains or where the hub would take over all final decisions without involvement of the compliance officers of the OE. FR: (Comments): This paragraph, read alongside other provisions on information sharing, also raises serious concerns. If common algorithms, based on shared data, are put in place, either: - All underlying data are shared and accessible by all institutions, which would raise important issues of personal data protection and very high cybersecurity risks (see arguments above on the impact of leaks and breaches, including on European and national sovereignty); or - The data is pseudonymized and strictly encrypted, but in this case it will be impossible

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			for each participating reporting entity to trace the source of the algorithm's decisions, creating a major "black box problem" and thus encouraging derisking. ES: (Comments): Please bear in mind that the use of profiling, automated-decision making tools and AI might trigger high data protection risks. Hence, please consider running a data protection impact assessment as part of the general impact assessment preceding the adoption of the legal act in line with article 39(10) EUDPR/35(10) GDPR. DK: (Comments): Agree DE: (Comments): We explicitly welcome the proposed changes since they align with the joint non-paper of DNK, NLD and GER.
	7. Without prejudice to Article 54, each Member	The scope of the limitation on the exercise of the fundamental right	HR: (Comments): HR

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	State may lay down in national law that to the extent that is necessary and proportionate, obliged entities may share within partnership for information sharing in AML/CFT field personal data collected in the course of performing its customer due diligence obligations under Chapter III, for the purposes of the prevention of money laundering and terrorist financing, provided that	under Article 8 of the Charter is as follows: sharing of personal data originating from CDD among parties to partnership for information sharing in AML/CFT field, where this sharing is necessary and proportionate for the purpose of prevention of ML/TF. The requirement that legal basis which permits the interference with fundamental rights must itself define the scope of the limitation on the exercise of the right concerned (Case C-311/18, C 419/14) is therefore met. The safeguards set out in points (a) to (e) are inspired by para 5.	The extent and the scope of the partnership should be defined at the EU level. NL: (Comments): Agreed, we suggest to add processing in general to avoid unclarity in conjunction with the safeguard ‘under f’ of this paragraph that prohibits ‘further processing’. <i>“obliged entities may process and share within partnership for information sharing”</i> It is essential for the NLs that the scope of sharing of data for partnerships for information sharing in the AML/CFT field is broader than article 55(4), because it is necessary that it does not prohibit already existing partnerships, like the Dutch TMNL, but also other partnerships throughout the EU (for example KYC-utilities). A broader competence for sharing of data is warranted for, since these partnerships are subject to significantly more extra requirements. Additionally, it is equally important that these partnerships are established under national law. These partnerships can take many different forms, with different participants and different purposes. All these different forms of partnerships require safeguards that are specifically tailored to the partnership at hand. Trying to harmonize this might lead to a framework that either lacks the necessary

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			safeguards because it is too broad or is too narrow and restrictive, nipping the development of different forms of sharing initiatives in the bud. In the future, when MS have gained more experience with different forms of partnership and best practices have been established, a higher level of harmonization throughout the EU on this issue might become more feasible. IT: (Comments): We reiterate our concerns and objections on the notion and the roles of “partnerships for information sharing” in compliance and information sharing. We are opposed to this amendment; it would also be inappropriate in a regulation, which is supposed to exercise direct effects vis-à-vis individuals within MS. AT: (Comments): The data exchange within partnerships as defined in paragraph 7 enables big data pools; the wording “necessary and proportionate” in paragraph 7 should be more specified, it is not really clear under which circumstances the data exchange is allowed or prohibited. We propose the following change: “Without prejudice to Article 54, AMLA shall draft

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			regulatory technical standards setting out information sharing in a partnership for information sharing...” BE: (Comments): OK, see comments above. SE: (Comments): We strongly support the general direction of the article. FR: (Comments): This paragraph could be retained (cf. above) but the following condition could be added after “provided that” : <i>“personal data shared <u>allow</u> the identification of anomalies or unusual circumstances indicating money laundering or terrorist financing”</i> or this one <i>“(a) personal data shared is objective in nature, and does not include the results of analyses, whether such analyses are performed by humans or automated systems”</i> ES: (Comments): Please consider, in the event partnership for information sharing in AML/CFT field are to be established via national law, whether these national systems could interoperate. Since this information sharing

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			could take place among obliged entities across different countries, we consider that the regulation of these ‘partnership for information sharing in AML/CFT field’ should be harmonised at EU level instead of being established under national law. Otherwise, national law inequalities could create obstacles that would make its practical application ineffective. (See our comments to article 2(42) of AMLR) DK: (Comments): Denmark find the introduction of partnerships for information sharing in AML/CFT field essential for increasing effectiveness of OEs efforts. As these partnerships can take many forms, with different participants and purposes, it is also key that they are established under national law, so the safeguards can be tailored to the specific partnership. The potential of such partnerships relies on their ability to also process shared personal data as part of their purpose. For example, the Danish FALK project looks to allow obliged entities to share and <u>analyse</u> transaction data in cooperation to identify suspicious networks, and also to do mutual reports to the FIU on the full networks, cf. also comment in article 6a paragraph 2c.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			It seems to lie implicit in the proposal, that partnerships can also proces shared personal data to the extend that it is laid down in national law as part of the scope and purpose. We however suggest to ensure full clarity in this paragraph, and to ensure coherence with articla 6a, cf. also comment to article 55 paragraph 7f: <i>“Without prejudice to Article 54, each Member State may lay down in national law that to the extent that is necessary and proportionate, obliged entities may share within partnership for infor-mation sharing in AML/CFT field personal data collected in the course of performing its customer due diligence obligations under Chapter III, and proces shared personal data as part of an outsourcing arrangement between the partnership and the involved obliged entities established in accordance with article 6a of this Regulation, for the purposes of the prevention of money laundering and terrorist financing, provided that”</i> DE: (Comments): We particularly want to make sure that article 55(7) allows for sharing but also processing of personal data in these partnerships. This could be solved with an amendment of point 7 in the line of: <i>“Without prejudice to Article 54, each Member State may lay down in national law that</i>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<i>to the extent that is necessary and proportionate, obliged entities may share within partnership for information sharing in AML/CFT field personal data collected in the course of performing its customer due diligence obligations under Chapter III, and process that information as part of an outsourcing arrangement between the partnership and the involved obliged entities established in accordance with article 6a of this Regulation, for the purposes of the prevention of money laundering and terrorist financing, provided that at a minimum”</i> In addition, we ask for the insertion of “at a minimum” in order to clarify that more ambitious safeguards can be implemented by MS. LT: (Comments): It is not clear whether it is possible to share information only in cases of “abnormalities and unusual circumstances” or the scope is wider?
	(a) obliged entities concerned inform their customers or prospective		NL: (Comments): Agreed. AT: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	customers that they may share their personal data under this paragraph;		How is the relationship of this provision to Art. 13 and 14 GDPR? SE: (Comments): OK DK: (Comments): Agree
	(b) personal data shared originate from reliable sources, are accurate and up-to-date;		NL: (Comments): Agreed. SE: (Comments): OK DK: (Comments): Agree
	(c) the obliged entities concerned adopt measures of a high level of security in accordance with Article 32 of Regulation (EU)		NL: (Comments): Agreed. SE: (Comments): OK DK:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	2016/679, in particular in terms of confidentiality;		(Comments): Agree
	(d) each instance of sharing of personal data is recorded by obliged entities concerned; the records shall be made available to data protection authorities and consumer protection authorities upon request;		NL: (Comments): Agreed. BE: (Comments): Confer remark above. SE: (Comments): We are wondering about the role of consumer protection authorities in this regard. DK: (Comments): Agree
	(e) parties to the partnership for information sharing in AML/CFT field implement appropriate measures for protection of justified		NL: (Comments): Agreed. IT: (Comments): In addition to previous comments objecting to introducing such “partnerships”, we note that both “appropriate measures” and “justified interests” are extremely vague notions.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	interests of the customer concerned.		Would customers' access to confidential information, for example on STRs, be envisaged under this provision? BE: (Comments): Confer remark above. SE: (Comments): OK DK: (Comments): Agree
	Further processing of personal data under this paragraph for other, in particular commercial purposes, shall be prohibited.		NL: (Comments): Agreed. SE: (Comments): OK DK: (Comments): Agree under the condition that further processing refers to processing of personal data outside the scope and purpose of the the partnership established in national law.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	8. By [2 years from the entry into force of this Regulation], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify abnormalities or unusual circumstances indicating money laundering or terrorist financing.	The intention here is to have harmonised approach to „pre-suspicion“ or alerts mentioned in Article 55(5).	HR: (Comments): HR We support the harmonized approach to pre-suspicion or alerts mentioned in Article 55(5). In addition, the extent and the scope of the partnership should be defined by RTS. NL: (Comments): Agreed. However, this para could be deleted should the PSY decide to refer to annex III instead, see our comment regarding article 55(5)(a). BE: (Comments): NBB: we remain generally concerned about the fact that the current text of the rulebook already refers to very many RTS, ITS and guidelines to be produced by AMLA, in a limited period of time, which risks impacting the degree of technical quality of the rules to be enacted. Therefore, we are not in favor of extending the mandate already given to AMLA for the development of RTS. SE: (Comments): As mentioned above, we do not think that “abnormalities” should be specified in a RTS as this could have a negative impact on the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			effectiveness of partnerships and possibly lead to legal uncertainty. It would also be very hard to come up with a harmonised approach to “unusual circumstances”, as those by necessity are dependent on context. We think that this needs to be specified in L1. FR: (Comments): This paragraph would have the potentially unintended consequence of forcing AMLA to establish strict standards on what constitute unusual transactions or activities, with potentially far reaching impact on Article 28 and Article 50, and affecting the inherent flexibility of the definition of a suspicion. For example, in Article 50 as currently worded, AMLA issues guidance on indicators of unusual or suspicious activity or behaviour, not standards. In our opinion, this flexibility should be maintained. National authorities, through the NRA, sectorial risk assessments and the input of the national FIUs are best placed to define what should constitute a suspicion. If, as would be necessary in our opinion, multilateral information sharing takes place only in the framework of partnerships regulated at national level, such specifications could be left to be defined at that same level. DK:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			(Comments): Agree DE: (Comments): We welcome the provision since it aligns with the joint DNK, NLD and GER non-paper.
			AT: (Comments): We would prefer to have partnerships for information sharing organised by AMLA for reasons of effectiveness and efficiency. We propose to consider wording along the following lines: 9. AMLA shall be responsible for setting up partnerships for information sharing. 10. Obligated entities or auxiliary private entities shall be able to apply for inclusion into a partnership for information sharing. 11. Where obliged entities or auxiliary private entities have in place effective policies, procedures and controls in order to ensure compliance with this Article, with Article 54 and 55a and with Regulation (EU) 2016/679, AMLA shall accept their application.
	Article 55a		BE: (Comments): NBB: This Article is totally unclear; its rationale should be explained and the texte redrafted to

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			become understandable, otherwise it should be scrapped. IE: (Comments): While it may be useful for a bank to have this information, how disruptive will this really be to ML? Is it much better to exchange information private – private. What will they be reporting on? DE: (Comments): We ask for the deletion of Article 55a. The concept goes far beyond the idea of private partnerships and raises concerns with regards to the principles of necessity and proportionality. It remains particularly unclear, why public authorities should get involved at this point. The private partnerships shall allow for more efficient STRs. This would not be necessary anymore if public authorities were involved from the beginning and had access to any “unfiltered”, non-suspicious data. If no consensus can be reached on the deletion of Article 55a, the participation of public authorities and the facilitation of partnerships for information sharing by auxiliary private entities should at the very least be made optional and for the Member States to decide. For this case we suggest the below amendments.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	Partnership for information sharing in AML/CFT field		DE: (Comments): The wording of the title of this article should be amended to reflect that this article deals with cooperation of joint utilities with public authorities and the facilitation of partnerships for information sharing by auxiliary private entities. Drafting suggestion: “Cooperation of partnerships for information sharing in AML/CFT field with public authorities and facilitation of partnerships for information sharing in AML/CFT field by auxiliary private entities”. Since the participation of public authorities and the facilitation by auxiliary private entities are two completely unrelated issues, it could in this case also be preferable to split the provisions into two separate articles.
	1. Partnership for information sharing in AML/CFT field can beside obliged entities comprise	This is to reflect responses to questionnaire.	HR: (Comments): HR We support a wider partnerships among different financial entities (e.g. banking and non-banking industry). NL:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	also public authorities and auxiliary private entities.		(Comments): We have several serious concerns with regard to this article. First of all, the term ‘auxiliary private entities’ requires clarification and introduces yet another new concept to AMLR. We are unsure what other parties could be part of these partnerships whose participation is not sufficiently covered by other provisions concerning dataprocessing and outsourcing. Article 55 regulates the relation with the GDPR, auxiliary entities would probably qualify as processor under the GDPR. Adding extra provisions would clutter up the existing privacy framework whilst not adding extra safeguards. The same goes for outsourcing arrangements. The auxiliary entity will probably perform certain services that qualify as outsourcing if they are not just active as processor. The responsibilities of OE concerning outsourcing are already explicitly mandated and regulated. Secondly, the addition of public authorities and auxiliary parties creates a discrepancy with the definition of ‘partnerships for information sharing’ and suggest that public authorities do not have sufficient powers to access information of OE’s currently or are similar to auxiliary entities . We are in favor of deletion of this article. Instead, we suggest to clarify in article 55(7) that MS can also allow public authorities to participate in these partnerships. AT:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			(Comments): What is the distribution of roles under data protection law in these partnerships and auxiliary entities (who is the controller according to Art. 4(7) of the GDPR)? Is there a practical example of what is meant by an auxiliary entity? BE: (Comments): Quid : what is then the value of the definition of “Partnership for information sharing in AML/CFT field” as proposed in new Art 2, par 42, being limited to OE ? It does not mean much anymore. And the value of the remaining exceptions to the tipping off under article 54 ? Idem. They can be set aside just by the setting up of a partnership (Art 3a). Let us be clear, BE is not against innovation and information exchange but we are against introductions of modifications destabilising the fundamentals on which the AML system is build, and more in particular the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			protection of the confidentiality of the STRs and the analysis work of the FIUs. FR: (Comments): It should be clear that this Article refers to partnerships that will be further defined in national law as specified in Article 55(7). As is, article 55(7) and article 55(a) would seem to refer to different types of partnerships, which would create uncertainties on the legal framework applicable to the partnerships. Furthermore, similarly to the outsourcing provisions, obliged entities should remain responsible for the actions of any potential auxiliary private entities. 1. Partnerships for information sharing in AML/CFT field established pursuant to Article 55(7) can beside obliged entities comprise also public authorities and auxiliary private entities. <i>1a. Obligated entities that are parties to the partnership shall remain fully liable for any action, whether an act of commission or omission, connected to the tasks that are carried out by the auxiliary, and also remain responsible as controller pursuant Article 4(7)</i>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			<i>of Regulation (EU) 2016/679 for any personal data processed for the purpose of the auxiliary's tasks.</i> DK: (Comments): We agree that public authorities should be able to take part in partnerships for information sharing in AML/CFT field. The term “auxiliary private entities” however needs clarification before we can comment further on this proposal. Are they to be understood as the legal entity that forms the partnership – then entity where personal data is shared within – or rather a separate legal entity that can also take part? If the latter we would like to get more specific understanding on the types of companies in mind. DE: (Comments): If a majority of member states is in favour of keeping Article 55a, we propose the following wording making the participation of public authorities optional and limiting the data to be shared and accessed by public authorities:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			“Member States may allow Financial Intelligence Units (FIUs) to participate in partnerships for information sharing in AML/CFT field to the extent that it is necessary and proportionate for the purposes of the prevention of money laundering and terrorist financing. FIUs participating in partnerships for information sharing shall not share personal data and shall only have access to data shared by obliged entities within the partnerships if the data, alone or together with other data shared within the partnership, displays abnormalities or unusual circumstances which indicate money laundering, including its predicate offences, or financing of terrorism.”
	2. Auxiliary private entities under paragraph 1 shall facilitate fulfilling the purpose of partnership for	This is inspired by arrangements for exchange of information on the credit history and creditworthiness of the client, which often employ	HR: (Comments): HR While we are open to explore this idea further, we would kindly ask for a <u>definition of auxiliary</u>

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	information sharing in AML/CFT field. They shall be incorporated in one of the Member States and they shall have in place policies, procedures and controls in order to ensure compliance with this Article, with Article 54 and 55 and with Regulation (EU) 2016/679.	auxiliary private entities aggregating that data.	<u>private entities</u> to be included and further discussed. For our understanding, is the intention for MS to license such entities? NL: (Comments): See comment under article 55a(1), the term ‘auxiliary private entities’ requires clarification. We are unsure what other parties could be part of these partnerships whose participation is not sufficiently covered by article 55 para 1 or outsourcing arrangements, where responsibility of the OE is already explicitly mandated. More fundamentally, we oppose the shift of responsibility for compliance with the requirements of the AML/CFT-framework from the participating OEs to this undefined ‘auxiliary private entity’ that are not obliged entities, as this may pose difficulties in supervision. The compliance with the obligations of this framework should remain with the OEs. We are in favor of deletion of this article. Instead, we suggest to clarify in article 55(7) that MS can also allow public authorities to participate in these partnerships. BE: (Comments): There is a clear need for more clarity of these “Auxiliary private entities”. Who are the CZ Pcy thinking of ?

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			SE: (Comments): We do not oppose the general idea, but based on our own experiences, we see potential GDPR problems by allowing private entities not regulated in the AML-framework to participate in a partnership as they do not process data <i>in order to</i> ensure compliance with the AML framework. One example: As they are not obliged entities, they cannot process data covered by article 9 and 10 in the GDPR on the basis of article 55. ES: (Comments): Please consider defining “auxiliary private entities” on Article 2 and providing further detail on their interaction with the Partnerships for information sharing in AML/CFT. DK: (Comments): See comment to paragraph 1. DE: (Comments): We have serious concerns with the concept of “auxiliary private entities” and ask for the deletion of this paragraph and paragraphs 3 to 5.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Should the majority of member states prefer to keep it, we would welcome a clarification regarding the meaning of such entities. Is our understanding correct, that these can be seen as a kind of platform, on which the data is transferred? In any case, we suggest the following wording, making clear that the facilitation of a partnership for information sharing by an auxiliary private entity is an option, not a requirement, and at the same time laying down safeguards to be adhered to when making use of auxiliary private entities: “Member States may allow the facilitation of partnerships for information sharing by auxiliary private entities. These auxiliary private entities shall be incorporated in one of the Member States and they shall have in place policies, procedures and controls in order to ensure compliance with this Article, with Article 54 and 55 and with Regulation (EU) 2016/679.”
	3. The policies, procedures and controls		NL: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	referred to in paragraph 2 shall include		See comment under article 55a(1), the term ‘auxiliary private entities’ requires clarification. We are unsure what other parties could be part of these partnerships whose participation is not sufficiently covered by article 55 para 1 or outsourcing arrangements, where responsibility of the OE is already explicitly mandated. More fundamentally, we oppose the shift of responsibility for compliance with the requirements of the AML/CFT-framework from the participating OEs to this undefined ‘auxiliary private entity’ that are not obliged entities, as this may pose difficulties in supervision. The compliance with the obligations of this framework should remain with the OEs. We are in favor of deletion of this article. Instead, we suggest to clarify in article 55(7) that MS can also allow public authorities to participate in these partnerships. BE: (Comments): This means that these “Auxiliary private entities” who are not OE act as OE, and take over their responsibilities. But again OE will lose any analysis capacity who might even no longer be able to explain to their supervisors on what basis a decision has been taken. DK: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			See comment to paragraph 1. DE: (Comments): See our comments above – we suggest to delete this paragraph. If a majority of member states are in favour of keeping paragraph 2, paragraph 3 should be kept.
	(a) the development of internal policies and procedures, including in particular :		DK: (Comments): See comment to paragraph 1.
	(i) risk management framework;		DK: (Comments): See comment to paragraph 1.
	(ii) the verification, proportionate to the risks associated with the tasks and functions to be		DK: (Comments): See comment to paragraph 1.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	performed by auxiliary private entity's staff, that those persons are of good repute, honesty and integrity and that they posses individual skills, knowledge and expertise to carry out their functions effectively;		
	(iii) the internal communication of auxiliary private entity's internal policies, procedures and controls;		DK: (Comments): See comment to paragraph 1.
	(iv) a policy on the training of auxiliary private entity's employees;		DK: (Comments): See comment to paragraph 1.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	(b) internal controls that include at least an independent audit function to test the internal policies and procedures referred to in point a).		DK: (Comments): See comment to paragraph 1.
			DK: (Comments): See comment to paragraph 1.
	4. Share in auxiliary private entity shall be held only by obliged entities or public authorities which are party to the partnership for information sharing.		NL: (Comments): See comment under article 55a(1), the term ‘auxiliary private entities’ requires clarification. We are unsure what other parties could be part of these partnerships whose participation is not sufficiently covered by article 55 para 1 or outsourcing arrangements, where responsibility of the OE is already explicitly mandated. More fundamentally, we oppose the shift of responsibility for compliance with the requirements of the AML/CFT-framework from the participating OEs to this undefined ‘auxiliary private entity’ that are not obliged entities, as this may pose difficulties in supervision. The compliance with the obligations of this framework should remain with the OEs. We are

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			in favor of deletion of this article. Instead, we suggest to clarify in article 55(7) that MS can also allow public authorities to participate in these partnerships. ES: (Comments): The drafting seems quite confusing. Clarification of the scope of the proposal would be welcome DE: (Comments): See our comments above. We ask for the deletion of this paragraph. If a majority of member states is in favour of keeping paragraph 2, this paragraph should be kept as well. LT: (Comments): It should be set forth that shares may be held by a OE and public authorithys as well (mix of them both).
			DK: (Comments): See comment to paragraph 1.
	5. Member States shall ensure effective supervision		NL: (Comments): See comment under article 55a(1), the term ‘auxiliary private entities’ requires clarification.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	of auxiliary private entity's compliance with the requirements stemming from this Article, Article 54 and 55 and from Regulation (EU) 2016/679.		We are unsure what other parties could be part of these partnerships whose participation is not sufficiently covered by article 55 para 1 or outsourcing arrangements, where responsibility of the OE is already explicitly mandated. More fundamentally, we oppose the shift of responsibility for compliance with the requirements of the AML/CFT-framework from the participating OEs to this undefined 'auxiliary private entity' that are not obliged entities, as this may pose difficulties in supervision. The compliance with the obligations of this framework should remain with the OEs. We are in favor of deletion of this article. Instead, we suggest to clarify in article 55(7) that MS can also allow public authorities to participate in these partnerships. BE: (Comments): Who and on what basis will they be supervised ? As OE ? DE: (Comments): See our comments above. We ask for the deletion of this paragraph. If a majority of member states is in favour of keeping paragraph 2, this paragraph should be kept as well. LT: (Comments): Who will be responsible for supervision?

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
<i>Article 56</i>	<i>Article 56</i>		
Record retention	Record retention		
1. Obligated entities shall retain the following documents and information in accordance with national law for the purpose of preventing, detecting and investigating, by the FIU or by other competent authorities, possible money laundering or terrorist financing:	1. Obligated entities shall retain the following documents and information in accordance with national law for the purpose of preventing, detecting and investigating, by the FIU or by other competent authorities, possible money laundering or terrorist financing:		DE: (Comments): Germany would like to refer to the “EMPACT recommendation on the harmonization of bank statement formats” and the discussion in the Law Enforcement Working Party between Commission and Member States on how to establish an obligation for financial institutions to hold financial transaction data in a prescribed machine-readable format. This should enable financial institutions to transfer this data in a more uniform format to FIUs and law enforcement authorities upon request. As the implementation of such an EU-wide applicable format would require an immediately binding

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			provision towards financial institutions in an European regulation, the AMLR seems a suitable place. Germany would appreciate if DG FISMA could review this issue. We stand ready to provide input as necessary.
(a) a copy of the documents and information obtained in the performance of customer due diligence pursuant to Chapter III, including information obtained through electronic identification means, and the results of the analyses undertaken pursuant to Article 50;	(a) a copy of the documents and information obtained in the performance of customer due diligence pursuant to Chapter III, including information obtained through electronic identification means, and the results of the analyses undertaken pursuant to Article 50;		DE: (Comments): It should be ensured that a full copy of relevant documents can be obtained and recorded. It is not feasible to erase or to black any information not strictly necessary but contained in the document. <u>Drafting suggestion:</u> (a) a full copy of the documents and information obtained in the performance of customer due diligence pursuant to Chapter III, including information obtained through electronic identification means, and the results of the analyses undertaken pursuant to Article 50;

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(b) the supporting evidence and records of transactions, consisting of the original documents or copies admissible in judicial proceedings under the applicable national law, which are necessary to identify transactions.	(b) the supporting evidence and records of transactions, consisting of the original documents or copies admissible in judicial proceedings under the applicable national law, which are necessary to identify transactions.		BE: (Comments): + c) and the evidence of the STRs sent to the FIU.
2. By way of derogation from paragraph 1, obliged entities may decide to replace the retention of copies of the information by a retention of the references to such information, provided that the nature and method of retention of such information ensure that the	2. By way of derogation from paragraph 1, obliged entities may decide to replace the retention of copies of the information by a retention of the references to such information, provided that the nature and method of retention of such information ensure that the		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
obliged entities can provide immediately to competent authorities the information and that the information cannot be modified or altered.	obliged entities can provide immediately to competent authorities the information and that the information cannot be modified or altered.		
Obligated entities making use of the derogation referred to in the first subparagraph shall define in their internal procedures drawn up pursuant to Article 7, the categories of information for which they will retain a reference instead of a copy or original, as well as the procedures for retrieving the information so that it can be	Obligated entities making use of the derogation referred to in the first subparagraph shall define in their internal procedures drawn up pursuant to Article 7, the categories of information for which they will retain a reference instead of a copy or original, as well as the procedures for retrieving the information so that it can be		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
provided to competent authorities upon request.	provided to competent authorities upon request.		
3. The information referred to in paragraphs 1 and 2 shall be retained for a period of five years after the end of a business relationship with their customer or after the date of an occasional transaction. Upon expiry of that retention period, obliged entities shall delete personal data.	3. The information referred to in paragraphs 1 and 2 shall be retained for a period of ~~five~~ ten years after the end of a business relationship with their customer or after the date of an occasional transaction, or after the date of refrainment from carrying out a transaction or establishing a business relationship . Upon expiry of that retention period obliged entities shall delete personal data.	To reflect discussions on WP of 11.11.2021.	

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Replies from: HR CY SK SI HU NL IT EE AT BE SE EL FR ES FI LV IE DK BG DE LT MT

Updated: 08/11/2022 16:19

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
The retention period referred to in the first subparagraph shall also apply in respect of the data accessible through the centralised mechanisms referred to in Article 14 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> .	The retention period referred to in the first subparagraph shall also apply in respect of the data accessible through the centralised mechanisms referred to in Article 14 of Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> .		
4. Where, on <i>[the date of application of this Regulation]</i> , legal proceedings concerned with the prevention, detection, investigation or prosecution of suspected money laundering or terrorist	4. Where, on <i>[the date of application of this Regulation]</i> , legal proceedings concerned with the prevention, detection, investigation or prosecution of suspected money laundering or terrorist	To reflect change in para 3.	

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
financing are pending in a Member State, and an obliged entity holds information or documents relating to those pending proceedings, the obliged entity may retain that information or those documents, in accordance with national law, for a period of five years from <i>[the date of application of this Regulation]</i> .	financing are pending in a Member State, and an obliged entity holds information or documents relating to those pending proceedings, Member States may, without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings, allow or require the obliged entity ~~may~~ to retain that information or those documents, in accordance with national law, for a period of ~~five~~ ten years from <i>[the date of application of this Regulation]</i> , where the		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	necessity and proportionality of such further retention have been established for the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing.		
Member States may, without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings, allow or require the retention of such information or documents for a further period of five years where the necessity	~~Member States may, without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings, allow or require the retention of such information or documents for a further period of five years where the necessity~~	To reflect change in previous subparagraph.	

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
and proportionality of such further retention have been established for the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing.	~~and proportionality of such further retention have been established for the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing.~~		
<i>Article 57</i>	<i>Article 57</i>		
Provision of records to competent authorities	Provision of records to competent authorities		
Obligated entities shall have systems in place that enable them to respond fully and speedily to enquiries from their FIU or from other competent authorities, in	Obligated entities shall have systems in place that enable them to respond fully and speedily to enquiries from their FIU or from other competent authorities, in		BE: (Comments): In order to be consistent with the 10 y retention period = the 5Y should also be modified to 10Y

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
accordance with their national law, as to whether they are maintaining or have maintained, during a five-year period prior to that enquiry a business relationship with specified persons, and on the nature of that relationship, through secure channels and in a manner that ensures full confidentiality of the enquiries.	accordance with their national law, as to whether they are maintaining or have maintained, during a five-year period prior to that enquiry a business relationship with specified persons, and on the nature of that relationship, through secure channels and in a manner that ensures full confidentiality of the enquiries.		
CHAPTER VII	CHAPTER VII		
Measures to mitigate risks deriving from anonymous instruments	Measures to mitigate risks deriving from anonymous instruments		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
<i>Article 58</i>	<i>Article 58</i>		
Anonymous accounts and bearer shares and bearer share warrants	Anonymous accounts and bearer shares and bearer share warrants		
1. Credit institutions, financial institutions and crypto-asset service providers shall be prohibited from keeping anonymous accounts, anonymous passbooks, anonymous safe-deposit boxes or anonymous crypto-asset wallets as well as any account otherwise allowing for the anonymisation of the customer account holder.	1. Credit institutions, financial institutions and crypto-asset service providers shall be prohibited from keeping anonymous accounts, anonymous passbooks, anonymous safe-deposit boxes or anonymous crypto-asset wallets as well as any account otherwise allowing for the anonymisation of the customer account holder.		FR: (Comments): We would like anonymity-enhancing coins or privacy coins to be included in that list.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Owners and beneficiaries of existing anonymous accounts, anonymous passbooks, anonymous safe-deposit boxes or crypto-asset wallets shall be subject to customer due diligence measures before those accounts, passbooks, deposit boxes or crypto-asset wallets are used in any way.	Owners and beneficiaries of existing anonymous accounts, anonymous passbooks, anonymous safe-deposit boxes or crypto-asset wallets shall be subject to customer due diligence measures before those accounts, passbooks, deposit boxes or crypto-asset wallets are used in any way.		DE: (Comments): Given the high ML/TF risk of any anonymous accounts, passbooks etc. please consider whether such accounts etc. should not be prohibited in due time and with reasonable transition periods.
2. Credit institutions and financial institutions acting as acquirers shall not accept payments carried out with anonymous prepaid cards issued in third countries, unless otherwise	2. Credit institutions and financial institutions acting as acquirers within the meaning Article 2 (1) of Regulation (EU) 2015/751⁸ shall not accept payments carried out with anonymous	The definition of the term “acquirer” was added for clarification purposes.	DE: (Comments): For clarification purposes the term “acquirer” should be defined, e.g. by reference to the definition contained in Article 2 No.1 of Regulation (EU) 2015/751

⁸ Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
provided in the regulatory technical standards adopted by the Commission in accordance with Article 22 on the basis of a proven low risk.	prepaid cards issued in third countries, unless otherwise provided in the regulatory technical standards adopted by the Commission in accordance with Article 22 on the basis of a proven low risk.		
3. Companies shall be prohibited from issuing bearer shares, and shall convert all existing bearer shares into registered shares by <i>[2 years after the date of application of this Regulation]</i> . However, companies with securities listed on a regulated market or whose shares are issued as	3. Companies shall be prohibited from issuing bearer shares, and shall convert all existing bearer shares into registered shares by <i>[2 years after the date of application of this Regulation]</i> . However, companies with securities listed on a regulated market or whose shares are issued as		AT: (Comments): The drafting is not entirely clear to us. We suggest adding clear definitions of bearer shares, bearer share warrants and shares issued as intermediated securities in line with the FATF Recommendations. Then, it will be possible to have a clear discussion about the treatment of bearer shares and bearer share warrants. DK: (Comments): DK: It is unclear what applies if a listed company is unlisted. DE:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
intermediated securities shall be permitted to maintain bearer shares.	intermediated securities shall be permitted to maintain bearer shares.		(Comments): Explanation of drafting suggestion (lit b): The obligation to convert bearer into registered shares is disproportionate if not attenuated by some reasonable grandfathering provision. Further comment: Please reconsider whether the companies mentioned in lit a) should not also be allowed to issue bearer shares in future. Companies shall be prohibited from issuing bearer shares, and shall convert all existing bearer shares into registered shares by [2 years after the date of application of this Regulation]. However, companies with securities listed on a regulated market or whose shares are issued as intermediated securities shall be permitted to maintain bearer shares.
Companies shall be prohibited from issuing bearer share warrants that are not in intermediated form.	Companies shall be prohibited from issuing bearer share warrants that are not in intermediated form.		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
<i>Article 59</i>	<i>Article 59</i>		
Limits to large cash payments	Limits to large cash payments		DE: (Comments): We reserve comments at a later stage
1. Persons trading in goods or providing services may accept or make a payment in cash only up to an amount of EUR 10 000 or equivalent amount in national or foreign currency, whether the transaction is carried out in a single operation or in several operations which appear to be linked.	1. Persons trading in goods or providing services may accept or make a payment in cash only up to an amount of EUR 10 000 in exchange for such goods or services , or equivalent amount in national or foreign currency, whether the transaction is carried out in a single operation or in several operations which appear to be linked.	The Presidency suggests the inclusion of the words “in exchange for such goods or services”, to clearly limit the provisions effect to business related transactions only, and not to other roles of the person as well (such as the provision of salaries to employees, payments of taxes, etc.)	HR: (Comments): HR Presidency's amendments are supported. IT: (Comments): We find this specification unnecessary. This condition is in fact certainly implicit, in the same way that it is implicit in the references to the categories of “obliged entities” in article 3 of the regulation: such entities are in fact subject to the regulation in so far as they perform the activities that are typical of their respective categories; any other activities remain out of the scope of the AML obligations, even in cases where amounts are significant or “suspicions” may arise. The limitation of par. 1 to persons acting in their professional functions is also reiterated in par. 4 of this article. AT: (Comments): The issue of cash is a highly sensitive one in Austria. There is widespread public scepticism

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			about any kind of restrictions on large cash payments. Nevertheless, we acknowledge the support for such measures among a number of MS in the Council. In the spirit of compromise, we have indicated that we can accept a cash limit of € 10 000. However, we cannot support a lower threshold and will urge to maintain this threshold during the trilogue. This question is a red line for us. With these caveats, we welcome the amendments proposed by the PRE and strongly support them. BE: (Comments): BE considers the threshold of EUR 10.000 too high and insists that this amount be revised downwards. However BE can agree with a compromise threshold of EUR 10.000. BE considers that the cash payment restriction should apply to all persons, except the persons excluded in point 4 (particulars, banks...) and not only to traders in goods of services. The new wording adds a new restriction to the scope. BE fears that a restricted scope open possible loopholes and large interpretation difficulties when it comes to control the traders. This will not help the legal certainty for companies and the competition between them. With more than 15 year's experience in cash payment restriction and

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			control, BE notices that enterprises ask widely for as simple and understandable as possible rules without complex exception or mechanism. BE will agree with the proposed wording as a compromise but asks the presidency and the Commission to confirm that Member States may not only adopt lower limits but also extend the scope of the restriction to other persons than traders in goods and services and to other transactions than exchanges of goods and services. Furthermore, we would like to draw the Presidency's attention to the issue of cash payments made by EU companies outside European territory. The current version of the text does not seem to authorize cash payments beyond the limit outside the European Union. Such a ban could have repercussions on the competitive position of our companies, particularly in countries where the banking system is very underdeveloped and where there is no alternative to cash. We propose that such payments beyond the limit be permitted. However, it would be up to the company to provide proof that the cash payment took place outside of European territory. Therefore, in order to prevent any discussion of the application field of the cash limitation, we propose to replace point 1 by this : “Payments related to a same contract or extra-contractual debt, may be made or received in

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			cash only up to an amount of EUR 10 000 , or equivalent amount in another currency,.” Then, in second instance, we would keep the exceptions to the rule at point 4 (payments between customers, or payments made to a credit institution and to certain financial institutions by their clients etc.) EL: (Comments): 1. Persons trading in goods or providing services may accept or make a payment in cash only up to an amount of EUR ~~10 000~~ 5.000 in exchange for such goods or services, or equivalent amount in national or foreign currency, whether the transaction is carried out in a single operation or in several operations which appear to be linked. FR: (Comments): Our position has not changed and we would like a lower threshold of 5,000€. FI: (Comments): We think that the clarification makes the text clearer and we support the change to avoid confusion.

Table 2 of 3

Replies from: HR CY SK SI HU NL IT EE AT BE SE EL FR ES FI LV IE DK BG DE LT MT

Updated: 08/11/2022 16:19

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
2. Member States may adopt lower limits following consultation of the European Central Bank in accordance with Article 2(1) of Council Decision 98/415/EC ⁹ . Those lower limits shall be notified to the Commission within 3 months of the measure being introduced at national level.	2. Member States may adopt lower limits following consultation of the European Central Bank in accordance with Article 2(1) of Council Decision 98/415/EC ¹⁰ . Those lower limits shall be notified to the Commission within 3 months of the measure being introduced at national level.		
3. When limits already exist at national level which are below the limit set out in paragraph 1, they shall continue to apply. Member States shall notify those limits within 3 months of the	3. When limits already exist at national level which are below the limit set out in paragraph 1, they shall continue to apply. Member States shall notify those limits within 3 months of the		

⁹ Council Decision of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

¹⁰ Council Decision of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
entry into force of this Regulation.	entry into force of this Regulation.		
4. The limit referred to in paragraph 1 shall not apply to:	4. The limit referred to in paragraph 1 shall not apply to:		
(a) payments between natural persons who are not acting in a professional function;	(a) payments between natural persons who are not acting in a professional function;		IT: (Comments): (a) payments between ~~natural~~ persons who are not acting in a professional function; This provision (which, in any event, seems superfluous and could be deleted) should apply equally to natural and legal persons. MT: (Comments): While it has been explained during previous working parties that MSs are able to introduce cash limitations with respect to payments occurring between natural persons not acting in a professional function, MT feels that the way in which this article is drafted, particularly keeping in mind sub-article 4(a), does not bring this concept out clearly. MT would appreciate if this

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			intention is better clarified under this article or in any of its accompanying recitals.
(b) payments or deposits made at the premises of credit institutions. In such cases, the credit institution shall report the payment or deposit above the limit to the FIU.	(b) payments or deposits made at the premises of credit and payment institutions. ~~In such cases, the credit institution shall report the payment or deposit above the limit to the FIU.~~	Payment services may be provided also by other regulated payment service providers, which are not credit institutions, such as payment institutions or electronic money institutions. These payment service providers can also accept cash. The Presidency is of the opinion that the limit on cash payments as stipulated in the Commission draft would prevent those institutions from provision of services enabling cash to be placed on a payment account or money remittance [within the meaning of points (1) and 6 of Annex I of PSD 2] in case the accumulated amount exceeds 10 000	HR: (Comments): HR shall not oppose to Presidency's proposal that would allow payment institutions, along with the credit institution, to receive cash equal to or above 10.000,00 EUR. However, HR is opposed to deletion of Commission's proposal related to reporting of payments or deposits above the limit to the FIU. We can see the rationale behind the Commission's proposal. In particular, 2019 Supranational Risk Assessment has identified cash and cash-like assets as one of the main risks and main triggers for the filing of suspicious transaction reports. As a country that already has a cash transaction reporting mechanism in place (threshold app 26.600,00 EUR), we find it important to emphasize that having such a tool indeed has an added value to financial-intelligence analysis performed by the FIU Croatia, namely: - analysis of data from cash transaction databases is an integral part of FIU's every case

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
		EUR. It would have a considerable impact on the payment services market and shall therefore granted an exemption.	- FIU's cases are also being initiated based on cash transaction reports. In this context it should be mentioned that a customer can use multiple different obliged entities to perform cash transaction. From the perspective of individual obliged entity perhaps there will be no suspicion on possible ML/TF, but having an overview of the total number of cash transactions performed by the same person with different obliged entities, especially in short time period, can give a different perspective and indicate to FIU a need for a further analysis of such transactions. Therefore, we consider cash transaction reporting mechanism as a very useful tool in mitigating ML/TF risks related to cash. NL: (Comments): As for the obligation to report to the FIU in this paragraph, the last sentence is deleted. We would like to stipulate the reports' clarification, which defines that this does not exempt these institutions of the reporting obligation covered by article 52 AMLR or alternatively, maintain the original text. IT: (Comments): We are not opposed to enlarge the capacity to facilitate payments in cash that falls under par. 1 to include payment institutions when such payments are performed at their premises.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			With reference to the threshold-based report to the FIU, we would prefer to keep the current language in par. 4, lett. b. In any event, we strongly encourage the introduction of more detailed provisions on threshold-based reports. On this note it would be important, in a rulebook with directly applicable provisions, to consolidate and clarify currently scattered provisions: • art. 17, paragraph 2, of the Directive explicitly mentions “reports submitted by obliged entities in accordance with Article 59(4), point (b), of Regulation”; • the same art. 17(2) envisages that the FIU receives, in addition to STRs/SARs, “other information relevant” to ML or TF; • these measures are also recalled in Recital 45 of the AMLD. The regulation should set out references to specific types of threshold-based reports, for example concerning deposits and withdrawals through card at ATMs. AMLA should be given a role to map out possible “models” and formats. BE: (Comments): NBB: if “Payment services may be provided also by other regulated payment service providers, which are not credit institutions, such as payment institutions or electronic money

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			institutions”, the last ones should also be mentioned in point (b) SE: (Comments): We believe the sentence ~~“In such cases, the credit institution shall report the payment or deposit above the limit to the FIU.”~~ should be reinstated as, according to our FIU, such reports can be of great value to the recipient. BG: (Comments): As indicated in the Presidency comment on limits to large cash payments (Article 59(4)(b) AMLR), payment services may be provided also by other regulated payment service providers, which are not credit institutions, such as payment institutions or electronic money institutions. These payment service providers can also accept cash. In this regard, the wording of Article 59(4)(b) AMLR should include not only “credit and payment institutions”, but also “electronic money institutions”. DE: (Comments): We support the added exemption for payment institutions in order not to unnecessarily hinder the functioning of the payment traffic.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			We support the deletion of the second sentence. In our view, this type of reports, which per se do not initially contain any suspicion, would not bring any immediate added value. The FIU should not become a data collection point, but should analyse reports of suspicious transactions. Obligated entities can still file STRs if suspicion arises during depositing cash. In this context, we would like to point out that our financial supervisor has issued interpretation and application guidelines for credit institutions laying down that a customer depositing more than 10.000 EUR has to substantiate the source of such cash. MT: (Comments):
	(c) central banks when performing their tasks.	The Presidency believes that an exemption should also be granted to central banks when performing their tasks, as they are not considered credit institutions in the meaning of Article 2(5) AMLR and may be in need to issue large cash transactions.	HR: (Comments): HR Presidency's amendments are supported. IT: (Comments): As already indicated in previous comments, we fail to understand this proposed amendment. The limits referred to in par.1, applicable to "persons trading in goods or providing services", does not affect Central Banks.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			Credit institutions are not affected by that limit either: they are, on the contrary, allowed to act as facilitators for performing payments in cash between third parties that would otherwise be prohibited under par. 1. DE: (Comments): We agree with the exemption for central banks.
5. Member States shall ensure that appropriate measures, including sanctions, are taken against natural or legal persons acting in their professional capacity which are suspected of a breach of the limit set out in paragraph 1, or of a lower limit adopted by the Member States.	5. Member States shall ensure that appropriate measures, including sanctions, are taken against natural or legal persons acting in their professional capacity which are suspected of a breach of the limit set out in paragraph 1, or of a lower limit adopted by the Member States.		
6. The overall level of the sanctions shall be	6. The overall level of the sanctions shall be		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
calculated, in accordance with the relevant provisions of national law, in such way as to produce results proportionate to the seriousness of the infringement, thereby effectively discouraging further offences of the same kind.	calculated, in accordance with the relevant provisions of national law, in such way as to produce results proportionate to the seriousness of the infringement, thereby effectively discouraging further offences of the same kind.		
	7. In cases of force majeure that result in the unavailability, at the national scale, of other means of payment, Member States may temporarily lift the limit referred to in paragraph 1 or 2.	The Presidency suggests that an additional paragraph is included, so that the restrictions on large cash payments may be derogated under exceptional circumstances beyond the control of the government, which would hinder the use of cashless transactions.	HR: (Comments): HR can support Presidency's proposal, but only if a Commission would evaluate whether the decision to introduce this emergency mechanism has been justified. SE: (Comments): We support the added paragraph. DE: (Comments):

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
		If a crisis were to occur, in which the infrastructure enabling efficient cashless transactions would not function properly, the affected Member State could face a serious reduction of its economic life. The presidency therefore believes that an emergency mechanism should be put in place. The immediate decision of the derogation should be up to each individual Member State, as they can best evaluate the need for such derogation in the first place. However, the Presidency suggests to give the Commission the power to oversee the entire process and evaluate whether the decision to derogate was justified, so that any cases of misuse can be prevented.	We agree with the inclusion of a provision that allows Member States to derogate the cash limit under exceptional circumstances.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
		Once the emergency is over, or in the case that the Commission finds the derogation unjustified, the Large cash payment restriction provision shall be immediately reinstated. This additional paragraph should act solely as a safety mechanism and only be used in the most pressing, inevitable situations. Nevertheless, the Presidency still believes its inclusion to be important, as it is crucial to act swiftly in emergency situations and this paragraph could potentially ease the decision-making process.	
	Member States shall immediately notify the Commission of such lifting and its justification.		SK: (Comments): We welcome the introduction of a new paragraph 7. In this regard, we would welcome a provision or at least recital to clarify who should be the responsible authority with the right to specify which institution (in EU or in the given

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	Member States shall reinstate the limit as soon as other means of payments become available again or if the Commission finds the lifting, or its continuing application, unjustified and issues an opinion thereon.		MS) is authorised to assess and declare that exceptional circumstances that hinder the implementation of cashless transactions have occurred. (it could be the National central bank, payment system supervisor, ECB...) AT: (Comments): We have a formal comment on the legal instrument envisaged. An opinion by the Commission is a non-binding legal instrument. Through the wording of this provision, however, it is made binding for Member States. Any system of binding legal acts must also allow the possibility of legal recourse. We are not sure that the present construction allows Member States to appeal against the Commission's opinion, since it is a non-binding instrument. Therefore, if there is a majority in favour of keeping the Commission's role, we propose that it issue a decision. This legal instrument would allow Member States the possibility of legal recourse and is formally important: "Member States shall reinstate the limit as soon as other means of payments become available again or if the Commission finds the lifting, or its continuing application, unjustified and issues ~~an opinion~~ a decision thereon." Should this proposed amendment not be taken into account we suggest a analysis by the legal

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			service if effective legal protection is sufficiently maintained. FR: (Comments): We welcome the clarification.
CHAPTER VIII			
FINAL PROVISIONS	FINAL PROVISIONS		
<i>Article 60</i>	<i>Article 60</i>		
Delegated acts	Delegated acts		
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
2. The power to adopt delegated acts referred to in Articles 23, 24 and 25 shall be conferred on the Commission for an indeterminate period of time from <i>[date of entry into force of this Regulation]</i> .	2. The power to adopt delegated acts referred to in Articles 23, 24 and 25 shall be conferred on the Commission for an indeterminate period of time from <i>[date of entry into force of this Regulation]</i> .		
3. The power to adopt delegated acts referred to in Articles 23, 24 and 25 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of	3. The power to adopt delegated acts referred to in Articles 23, 24 and 25 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.		
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.	4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.		
5. As soon as it adopts a delegated act, the	5. As soon as it adopts a delegated act, the		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Commission shall notify it simultaneously to the European Parliament and to the Council.	Commission shall notify it simultaneously to the European Parliament and to the Council.		
6. A delegated act adopted pursuant to Articles 23, 24 and 25 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of one month of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will	6. A delegated act adopted pursuant to Articles 23, 24 and 25 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of one month of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
not object. That period shall be extended by one month at the initiative of the European Parliament or of the Council.	not object. That period shall be extended by one month at the initiative of the European Parliament or of the Council.		
<i>Article 61</i>	<i>Article 61</i>		
Committee	Committee		
1. The Commission shall be assisted by the Committee on the Prevention of Money Laundering and Terrorist Financing established by Article 28 of Regulation <i>[please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final]</i> . That committee shall	1. The Commission shall be assisted by the Committee on the Prevention of Money Laundering and Terrorist Financing established by Article 28 of Regulation <i>[please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final]</i> . That committee shall		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council.	be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council.		
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.	2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.		
<i>Article 62</i>	<i>Article 62</i>		
Review	Review		
By [5 years from the date of application of this Regulation], and every three years thereafter, the Commission shall present a	By [5 years from the date of application of this Regulation], and every three years thereafter, the Commission shall present a		SI: (Comments): In order to clarify the approach and avoid duplication of work and unnecessary burden on MSs, we propose to add an additional subparagraph regarding the consideration of existing assessments and other comparable reports:

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
report to the European Parliament and to the Council on the application of this Regulation.	report to the European Parliament and to the Council on the application of this Regulation.		“In the preparation of the report the Commission shall take into account existing assessment reports and similar documents.” AT: (Comments): Delete. For us, the 4th AMLD review process has been extremely work-intensive and has resulted in a report riddled with factual errors that mainly repeated previous assessments and did not present any new findings. Since the future AML legislative framework will be more expansive, the scope and burden of the effectiveness review will too. FATF country assessments and numerous other peer reviews by international organisations will continue in any case. In this context, we think that the resources of all actors involved should be used for more productive purposes. While we have taken note of the Commission’s comment that such a review is a legal requirement, we are not aware of any legal basis and will maintain our comments until we have seen a specific legal obligation. Therefore, we propose a deletion of Art. 62 AMLR and Art. 56 of the 6th AMLD.

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
<i>Article 63</i>	<i>Article 63</i>		
Reports	Reports		
By [3 years from the date of application of this Regulation], the Commission shall present reports to the European Parliament and to the Council assessing the need and proportionality of:	By [3 years from the date of application of this Regulation], the Commission shall present reports to the European Parliament and to the Council assessing the need and proportionality of:		AT: (Comments): Like the ECB in its Opinion on the AMLR, we think that that for any planned review, the Commission should provide solid research and empirical evidence about the impact of cash payment limits and their effectiveness in achieving the objectives pursued. Moreover, such empirical evidence would not automatically lead to a need to further lower the cash limits. Therefore, the scope of the review required of the Commission should be revised so that both the need for and the proportionality of adjusting the cash limits are assessed, instead of this review being conducted

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			solely from the perspective of lowering them further.
(a) lowering the percentage for the identification of beneficial ownership of legal entities;	(a) lowering the percentage for the identification of beneficial ownership of legal entities;		
(b) further lowering the limit for large cash payments.	(b) further lowering the limit for large cash payments.		AT: (Comments): (b) ~~further lowering~~ adjusting the limit for large cash payments.
<i>Article 64</i>	<i>Article 64</i>		
Relation to Directive 2015/849	Relation to Directive 2015/849		
References to Directive (EU) 2015/849 shall be construed as references to this	References to Directive (EU) 2015/849 shall be construed as references to this		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Regulation and to Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> and read in accordance with the correlation table set out in Annex IV.	Regulation and to Directive <i>[please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final]</i> and read in accordance with the correlation table set out in Annex IV.		
Article 65	Article 65		IE: (Comments): We repeat our earlier request for Articles relating to BO registers to come into effect on the twentieth day following publication, rather than 3 years afterwards, given Ireland's inability to comply with 5AMLD in relation to trusts.
Entry into force and application	Entry into force and application		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
This Regulation shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Regulation shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .		
It shall apply from [3 years from its date of entry into force].	It shall apply from [3 years from its date of entry into force].		BE: (Comments): NBB: Next to the amount of RTS, guidelines etc, to be drafted by the AMLA during a short period of time, we are also concerned about the delay needed for adopting these RTS, that are supposed to precise and complete some essential requirements of AMLR (as CDD obligations or monitoring obligations). Considering the adoption time that can currently be observed for the EBA draft RTS on the central AML database (draft RTS were adopted in December 2021 and are supposed to be formally adopted only during 2023, on a date still undetermined), we wonder if these deadlines will allow that the process for the formal adoption of the RTS is finalized, the translation of them into all EU languages and their publication will happen in such way that they come into force <u>before or at least at the same time</u> than the general obligations enshrined in the

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			AMLR, which these RTS are called upon to specify, come themselves into application... if not, there will be a legal vacuum, and it is difficult to imagine how it will be possible to require or expect from OEs, in the meantime, <u>in a legally justified way</u>, to comply with the new AMLR obligations, which have not yet been specified by yet entered into force RTS. Consequently, we suggest that the entry in application of the AMLR, in principle 3 years after its entry into force, should nevertheless be conditional on the entry into force, also, of the RTS and ITS planned by the AMLR. <u>In connection with this, we also have thought to another difficulty which concerns the transition from national laws to European laws:</u> Discussions are currently underway on fundamental notions (e.g. the notion of beneficial owner) and it therefore seems certain that OEs will have to begin a process of adaptation. However, it is not realistic to hope that this can be done the day after the entry into application of the AMLR; consequently, if we want to achieve efficiency, it seems appropriate to us to anticipate this and to provide - in one way or another - that the AMLA will, in the interval between the entry into force of the AMLR and its entry into application, take the necessary actions (or coordinate the necessary actions – it can be determined later by itself) to ensure that during this transition period, OEs

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
			take the necessary measures to adapt to the new regulatory requirements and, consequently, are ready to effectively implement the changes as soon as AMLR comes into application three years later. ES: (Comments): It seems to us a long time to wait, considering the reason why the package was prepared: to introduce reforms to tackle the weaknesses of the EU's AML framework highlighted in 2019 scandals in the EU's financial and banking sectors. And also taking into account that, according to the Commissioner for Financial Stability, Financial Services, and the Capital Markets Union, Mairead McGuinness, suspicious transactions amount to 1.5% of the EU's GDP, being associated with unpredictable movement of vast amounts of profits that could destabilise the Union's financial system and threaten its integrity

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
This Regulation shall be binding in its entirety and directly applicable in all Member States.	This Regulation shall be binding in its entirety and directly applicable in all Member States.		
Done at Brussels,	Done at Brussels,		
For the European Parliament For the Council	For the European Parliament For the Council		
The President The President	The President The President		
Continues in Table 3	Continues in Table 3	Continues in Table 3	Continues in Table 3