



Council of the European Union  
General Secretariat

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**Interinstitutional files:  
2021/0239 (COD)**

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**Brussels, 08 April 2022**

**WK 5340/2022 INIT**

**LIMITE**

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## **WORKING DOCUMENT**

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

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**Subject:** AML: Questionnaire following AML working party meeting 7-8.03.2022  
AMLR internal policies, controls and procedures of obliged entities (WK 3006/2022)  
- Replies from 17 MS

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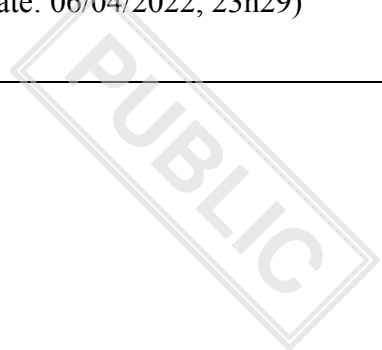
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WK 5340/2022 INIT

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Question	Reply
<p><b>A Points</b></p> <p><b>Article 7 - Scope of internal policies, controls and procedures</b></p>	<p>MT Comments:</p> <p><b>Unless otherwise stated, Malta is in agreement with the PCY proposed amendments under Points A.</b></p> <p>SI Comments:</p> <p><b>SI:</b></p> <p><b>In accordance with the technical amendments in Art 7, also the title should be adequately adjusted:</b></p> <p><b>Article 7 - Scope of internal policies, procedures and controls</b></p>
<p><b>Article 7(1)</b></p> <p>1. <i>Obligated entities shall have in place policies, <del>controls and</del> procedures and controls in order 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 under this Regulation and any administrative act issued by any supervisor under these legal provision and in particular to:</i></p> <p><i>(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;</i></p>	<p>MT Comments:</p> <p>Malta agrees with the proposed changes under Article 7(1), however, also suggests the following minor drafting amendment towards the end of the sentence:</p> <p><i>“Obligated entities shall have in place policies, procedures, and controls in order 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 under this Regulation and any administrative act issued by any supervisor under these legal provisions and in particular to [...]”</i></p>



*(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.*

Those policies, **controls and** procedures **and controls** shall be proportionate to the **risks**, nature, **complexity of business** and size of the obliged entity **and shall cover all its activities that fall under the scope of this Regulation.**

**Article 7(2)**

“2. The policies, **controls and** procedures **and controls** referred to in paragraph 1 shall include:

(a) the development of internal policies,

**controls** and procedures, including :

(i) risk management practices,

(ii) customer due diligence **as provided**

**by Sections 1 to 5 of Chapter III and by**

**Chapter IV of this Regulation, in**

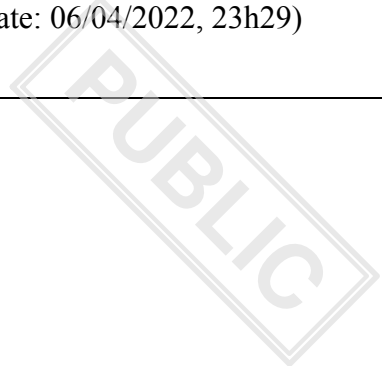
**particular the modalities of**

In line with Malta’s stance in reply to Q2.1, no objections are made in principle to the amendments proposed under Article 7(2). However, it is to be kept in mind that in defining what such policies and procedures are, one must ensure that this will not decrease the flexibility needed by obliged entities in the interpretation and application of such.

Additionally, specifically under paragraphs (d), (e), and (f) of Article 7(2), Malta suggests including, together with agents and distributors, a reference to credit intermediaries where the assistance they provide with the conclusion of a credit agreement involves an element of CDD (i.e., verifying when recruiting such, that they are persons of good repute, proportionate to the risks associated with the tasks and functions to be performed).

NL Comments:

<p>establishing business relationships, the individual customer risk assessment, the identification and verification of the identity of the customer and of the beneficial owner, the identification of the purpose and intended nature of a business relationship or occasional transaction, the modalities of the updating of this information, the identification, scrutiny and management of business relationships and occasional transactions, including those that pose a higher or lower money laundering and terrorist financing risk, 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, the identification of business relationships or occasional transactions</p>	<p style="text-align: center;">PUBLIC</p> <p>Those policies, <del>controls and</del> procedures <b>and controls</b> shall be proportionate to the <b>risksprofile</b>, nature, <b>complexity of business</b> and size of the obliged entity <b>and shall cover all its activities that fall under the scope of this Regulation.</b></p>
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<p><b>involving natural or legal persons from high risk third countries;</b></p> <p><b>(iii) the modalities of establishing and updating the overall risk assessment pursuant to Article 8;</b></p> <p><b>(iv) reporting, in particular reporting of suspicious transactions;</b></p> <p><b>(v) outsourcing and reliance on third parties;</b></p> <p><b>(vi) <del>and</del> record-keeping, as well as policies in relation to the processing of personal data pursuant to Article 55;</b></p> <p><b>(vii) the monitoring and management of compliance with such policies, <del>controls</del> and procedures <b>under the conditions set out in point b [see Q1 et Q2], the identification and management of deficiencies and the implementation of remedial actions;</b></b></p> <p><b><del>(b) policies, controls and procedures to identify, scrutinise and manage business</del></b></p>	
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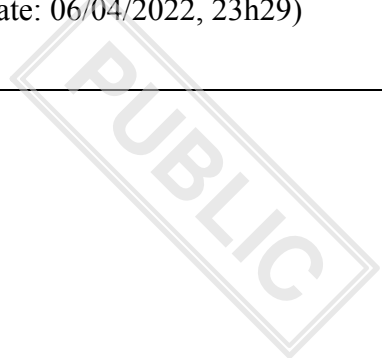
<p><del>relationships or occasional transactions that pose a higher or lower money laundering and terrorist financing risk;</del></p> <p>(...)</p> <p>(d) the verification, <del>proportionate to the risks associated with the tasks and functions to be performed</del>, when recruiting and assigning staff to certain tasks and functions and when appointing its agents and distributors, that those persons are of good repute, <del>in accordance with Article 11, proportionate to the risks associated with the tasks and functions to be performed;</del></p> <p>(e) the internal communication of the obliged entity's internal policies, controls and procedures, including to its agents and distributors;</p> <p>(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, <del>in accordance with Article 10.</del></p> <p>The internal policies, <del>controls and</del> procedures <del>and controls</del> set out in the first subparagraph, <del>points (a) to (f)</del> shall <del>take into account the risk</del></p>	<p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-15deg);">PUBLIC</p> <p>We would like to keep point b.</p> <p>BE Comments:</p> <p>1) We support the revisions suggested by the Presidency <b>in Article 7(1)</b>.</p>
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<p><b>assessment pursuant to Article 8 and shall</b> be recorded in writing. The senior management [concerning the body that shall approve procedures, see Q.7.2] shall approve those policies, <del>controls—and</del> procedures <b>and controls.</b>”</p>	<p>In addition, we suggest additional revisions:</p> <ul style="list-style-type: none"> <li>- the “risks of non-implementation and evasion of proliferation financing-related targeted financial sanctions” should be further clarified and a discussion should take place as regard the consequences of the revision of the FATF Recommendations in respect of proliferation financing, 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;</li> <li>- Inserting in the last subparagraph the reference to the overall risk assessment of Article 8, instead of referring to this risk assessment in the last subparagraph of paragraph 2, that enumerates more practical obligations instead of referring to elements that OEs have to take into account when elaborating their internal policies, procedures and controls:  <i>«Those policies, <del>controls and</del> procedures <b>and controls</b> shall be proportionate to the <b>risks, identified through the overall risk assessment referred to in Article 8, nature, complexity of business and size of the obliged entity and shall cover all its activities that fall under the scope of this Regulation.</b>”</i></li> </ul> <p>2) We can support most of the revisions suggested by the Presidency <b>in Article 7(2)</b>, subject to the following adaptations:</p> <ol style="list-style-type: none"> <li>a. In the first subparagraph, point (a): we would insert the words “covering at least” to stress that this enumeration is not exhaustive;</li> <li>b. In the first subparagraph, point (a), new (iii): <ul style="list-style-type: none"> <li>- We would enumerate primarily the overall risk assessment referred to in Article 8, as this overall risk assessment is the essential basis for all other measures implemented in accordance with the AML/CFT requirements, including elaborating the other internal policies and procedures;</li> <li>- In order to clarify them, we would complete the words “<i>the modalities of establishing business relationships</i>” by an illustration referring to the customer acceptance policy and the risk profile allocation to the customer (if that’s what we are trying to aim for; otherwise we do not see what these words are referring to);</li> <li>- We would replace “<i>the identification, scrutiny and management of business relationships and occasional transactions</i>” by “<i>the monitoring of business relationships and occasional</i></li> </ul> </li> </ol>
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	<p><i>transactions</i>", so that the wording of obligations referred to are in line with the one of article 21 AMLR;</p> <ul style="list-style-type: none"><li>- We would shorten/simplify a bit the enumeration;</li></ul> <p>C. In the first subparagraph, point (a)(iv): we would only refer to the reporting of suspicious transactions, as we do not clearly understand to which other kind of reporting it is referred to,</p> <p>d. In the first subparagraph, point (e): we wonder if it is appropriate to refer there to internal controls;</p> <p>e. We would delete the overall risk assessment reference in the second subparagraph (see explanation above).</p> <p>→ <u>Drafting suggestions:</u></p> <p>"(a) the development of internal policies, <del>controls</del> and procedures, <del>including covering at least</del> :</p> <ul style="list-style-type: none"><li><b><u>(i) the modalities of establishing and updating the overall risk assessment pursuant to Article 8;</u></b></li><li><b><u>(ii) risk management practices,</u></b></li><li><b><u>(iii) customer due diligence as provided by Sections 1 to 5 of Chapter III and by Chapter IV of this Regulation, in particular the modalities of establishing business relationships, including the customer acceptance policy and the risk profile allocation, the individual customer risk assessment, the identification and verification of the identity of the customer and of the beneficial owner, the identification of the purpose and intended nature of a business relationship or occasional transaction, the modalities of the updating of this information, the monitoring identification, scrutiny and management of business relationships and occasional transactions, including those that pose a</u></b></li></ul>
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	<p><i>higher or lower money laundering and terrorist financing risk, 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, the identification of business relationships or occasional transactions involving or a natural or legal persons from a high risk third countries;</i></p> <p><i>(iii) the modalities of establishing and updating the overall risk assessment pursuant to Article 8;</i></p> <p><i>(iv) reporting, in particular reporting of suspicious transactions;</i></p> <p><i>(v) outsourcing and reliance on third parties;</i></p> <p><i>(vi) and record-keeping, as well as policies in relation to the processing of personal data pursuant to Article 55;</i></p> <p><i>(vii) the monitoring and management of compliance with such policies, controls and procedures under the conditions set out in point b [see Q1 et Q2], the identification and management of deficiencies and the implementation of remedial actions;</i></p> <p><i>(b)...</i></p> <p><i>(c)...</i></p> <p><i>(d)...</i></p> <p><i>(e) the internal communication of the obliged entity's internal policies, controls and procedures, including to its agents and distributors;</i></p> <p><i>(f)...</i></p> <p><i>The internal policies, controls and procedures and controls set out in the first subparagraph, points (a) to (f) shall take into account the risk assessment pursuant to Article 8 and shall be recorded in writing. The senior management [concerning the body that shall approve procedures, see Q.7.2] shall approve those policies, controls and procedures and controls."</i></p> <p>Additionally, in Article 7(3):</p>
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	<p>- We suggest (i) to better distinguish the internal policies and procedures, on the one hand, and the internal controls, on the other hand, in line with what is done in the other paragraphs of this Article, and (ii) to maintain the wording of the Directive (EU) 2015/849 that requires obliged entities to “monitor” their policies, controls and procedures</p> <p>→ <u>Drafting suggestion:</u> «The obliged entities shall <b>monitor and</b> keep their policies, <del>controls and</del> procedures <b>and controls</b> up to date, and enhance them where weaknesses are identified.»</p> <p>SI Comments:</p> <p>SI:</p> <p>We understand and support the reasoning for amending Article 7(1), however the proposed wording may be confusing, as the phrase “<i>and any administrative act issued by any supervisor</i>” might implicate that any administrative act, issued (and published) by a supervisor in one Member State has impact on all obliged entities in every Member State. We therefore propose the following addition to the wording:</p> <p>“1. <i>Obliged entities shall have in place policies, procedures and controls in order 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 under this Regulation and any administrative act issued by any supervisor <b>in relation to the complying obliged entity</b> under these legal provision and in particular to:</i>”</p>
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	<p>SI:</p> <p>Firstly, for the sake of a clearer readability, we would propose to further use line tags under 7(2)(a)(ii) as follows:</p> <p>(ii) customer due diligence as provided by Sections 1 to 5 of Chapter III and by Chapter IV of this Regulation, in particular:</p> <ul style="list-style-type: none"><li>- the modalities of establishing business relationships,</li><li>- the individual customer risk assessment,</li><li>- the identification and verification of the identity of the customer and of the beneficial owner,</li><li>- the identification of the purpose and intended nature of a business relationship or occasional transaction,</li><li>- the modalities of the updating of this information,</li><li>- the identification, scrutiny and management of business relationships and occasional transactions, including those that pose a higher or lower money laundering and terrorist financing risk,</li><li>- 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,</li></ul>
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	<ul style="list-style-type: none"> <li>- the identification of business relationships or occasional transactions involving natural or legal persons from high risk third countries;</li> </ul> <p>Secondly, it seems unclear what is meant by the wording in the sixth indent above “<i>the identification ... of business relationships and occasional transactions</i>”. We kindly ask for clarification.</p> <p>And thirdly, from the last indent, the phrase “...persons <u>from</u> high risk third countries” may result in very diverse application. What does it mean, that somebody is <u>from</u> a HRTC? That he/she is born there, regardless of the current living situation, or has lived there for at least XY years, or has the nationality of a HRTC, or has had it in the past for at least a certain amount of time, etc.. More detailed answers to these questions should be given in the L2 framework, however the wording in L1 should be more open so that L2 framework can take into account all possible relations to HRTC for both natural and legal persons. The proposal is to use the word “<i>related to</i>” instead of “<i>from</i>”:</p> <ul style="list-style-type: none"> <li>- the identification of business relationships or occasional transactions involving natural or legal persons <del>from</del> <b>related to</b> high risk third countries;</li> </ul> <p>HU Comments:</p> <p>Hungary supports the text. It reflects the previous policy proposal of the Presidency well. Technical correction of a typo in the leading paragraph of Article 7.1:  <i>[...] issued by any supervisor under these legal provisions [...]</i></p> <p>Regarding Article 7(2) we would support adding further details in the text to be in line with the main elements of CDD under Article 16 of AMLR. In case the text includes more details that the text proposed by the Commission, which is supported by Hungary, important elements should be also included in the text:</p> <ul style="list-style-type: none"> <li>- understanding of ownership and control structure of the customer,</li> <li>- ongoing monitoring, including scrutiny</li> </ul> <p>Drafting proposal for Article 7.2.a.ii (proposed additions highlighted in bold):  <i>(ii) customer due diligence as provided by Sections 1 to 5 of Chapter III and by Chapter IV of this Regulation, in particular the modalities of establishing business relationships, the individual</i></p>
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	<p><i>customer risk assessment, the identification and verification of the identity of the customer and of the beneficial owner, <b>including the understanding of ownership and control structure of the customer</b>; the identification of the purpose and intended nature of a business relationship or occasional transaction, the modalities of the updating of this information, <b>ongoing monitoring, including the identification, scrutiny and management of business relationships and occasional transactions, including those that pose a higher or lower money laundering and terrorist financing risk, 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, the identification of business relationships or occasional transactions involving natural or legal persons from high risk third countries</b>;</i></p> <p>Drafting proposal for an additional Article 7.2.c: <i>(c) an independent audit function to test the internal policies, controls and procedures referred to in point (a);</i></p> <p>Drafting proposal for Article 7.2.e (additions in bold, deletions in bold strikethrough): <i>(e) the internal communication of the obliged entity's internal policies, <b>procedures</b> <del>controls</del> and <del>controls</del> <del>procedures</del>, including to its agents and distributors;</i></p> <p>DE Comments:</p>
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	<p><b>Reference to TFS-obligations is irritating as Art. 7 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. This topic is outside the scope of the AMLR as set forth in its Article 1 and should not be addressed here.</b></p> <p><b>Still serious doubts that Art. 114 TFEU can serve as legal basis for setting up general financial sanction-related requirements. This could interfere with the Member States' competencies with regard to implementing the Common Foreign and Security Policy (Art. 29 and Art. 215 TFEU).</b></p>
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**Questionnaire following AML working party meeting 7-8.03.2022**

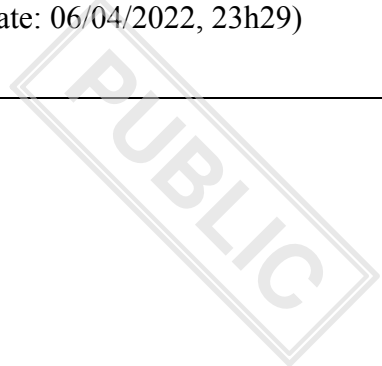
**Deadline: 4 April 2022**

**AMLR internal policies, controls and procedures of obliged entities (WKs 3006/2022)**

17MS : MT NL BE SI FI LV EL HU CZ IT DE BG RO SK LT PL ES (last update: 06/04/2022, 23h29)

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	<p><b>Compliance with TFS 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, clarification should be provided that already existing TFS structures can be used for the required measures with regard to PF-TFS.</b></p> <p>RO Comments:</p> <p><b>Agree</b></p>
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	<p>LT Comments:</p> <p><b>The following addition is proposed to the last subparagraph of Article 7 (1):</b></p> <p>Those policies, <del>controls and</del> procedures <b>and controls</b> shall be proportionate to the <b>risks</b>, nature, <b>complexity of business</b> and size of the obliged entity <b>and shall cover all its activities that fall under the scope of 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 under this Regulation and any administrative act issued by any supervisor under these legal provision.</b></p>
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**Proposal for the breakdown of paragraph (a) (ii) into separate sub - paragraphs. Subparagraph (ii) contains a number of points / requirements, which will be seriously questioned in the future when irregularities are identified and sanctioned. Because if only one of the things in that paragraph is violated, the Authority will argue that it is not sufficient to establish an infringement as a violation of part (ii) in its entirety.**

(a) the development of internal policies, ~~controls~~ and procedures, including :

**(i)** risk management practices

**(ii) modalities of establishing business relationships,**

**(iii) the individual customer risk assessment,**

**(iv) the identification and verification of the identity of the customer and of the beneficial owner,**

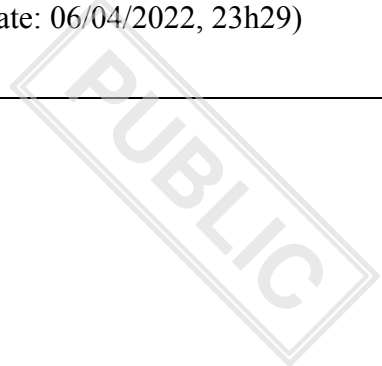
**(v) the identification of the purpose and intended nature of a business relationship or occasional transaction,**

**(vi) the modalities of the updating of this information,**

**(vii) the identification, scrutiny and management of business relationships and occasional transactions, including those that pose a higher or lower money laundering and terrorist financing risk,**

**(viii) 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,**

	<p>(ix) the identification of business relationships or occasional transactions involving natural or legal persons from high risk third countries;</p> <p>(x) the modalities of establishing and updating the overall risk assessment pursuant to Article 8;</p> <p>(xi) reporting, in particular reporting of suspicious transactions;</p> <p>(xii) outsourcing and reliance on third parties;</p> <p>(xiii) <del>and</del> record-keeping, as well as policies in relation to the processing of personal data pursuant to Article 55;</p> <p>(xiv) the monitoring and management of compliance with such policies, <del>controls</del> and procedures under the conditions set out in point b [see Q1 et Q2], the identification and management of deficiencies and the implementation of remedial actions;</p> <p>Reference to point b to be checked, if point b is deleted.</p> <p>ES Comments:</p> <p>Ok, especially regarding “any other legal provisions”, as we are in favour that all policies, procedures and controls should also ensure the national framework compliance developed wherever there is scope for national discretion</p>
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	<p>We support the idea that proportionality should not only be assessed by size. We would suggest, notwithstanding, to refine the risk factor proposal to further clarify that it is linked to ML/TF area:</p> <p>... proportionate to the ML/TF risks to which the obliged entity is exposed, nature.... Or ... overall risk assessment...if it is finally decided to use this nomenclature to name Article 8 (see below)</p> <p>On the contrary, we do not see the need to add the last sentence, as art.7.2 already cover what policies, procedures and controls should address</p> <p>.... <del>and shall cover all its activities that fall under the scope of this Regulation</del></p> <p>Here, we consider it essential for obliged entities to adopt:</p>
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	<p>(a) <i>A written policy on the admission of customers, with a risk-based approach.</i> Accordingly, the types of customers that would present a higher than average risk, and the measures to be taken to mitigate this risk, will be identified here.</p> <p>We would also suggest:</p> <p>(a-b) a small refinement: <i>Risk management practices framework</i></p> <p>(e d) Simplify paragraph ii, which is very detailed, to avoid the risk of being considered as a closed list, bearing also in mind the risk-based approach. Alternative drafting for paragraph ii): <i>The process to comply with customer due diligence obligations on a risk-based approach, as provided by Chapter IV of this Regulation</i></p> <p>Should the proposal nevertheless go ahead, we would suggest specifying that the information to be updated would not only relate to the purpose and nature of the business relationship, but to all CDD information collected from the customer. <del>...the modalities of the updating of this the customer due diligence information,</del></p>
<p><b>Article 7(4)</b></p> <p>“4. By [2 years after the entry into force of this Regulation], AMLA shall issue guidelines on the elements that obliged entities <del>should</del> shall take into account, <b>based on their nature, size and the outcome of their overall risk assessment</b>, when deciding on the extent of their internal policies, controls and procedures.”</p>	<p>BE Comments:</p> <p>We are of the opinion that repeating these elements, that are already mentioned in Article 7(1), second subparagraph, has no added value and, furthermore, could lead to misinterpretation as the enumeration is not the same as in Article 7(1) (the complexity of business is forgotten). Consequently, we suggest (i) deleting the added words, but (ii) to better distinguish the internal policies and procedures, on the one hand, and the internal controls, on the other hand, in line with what is done in the other paragraphs of this Article.</p> <p>→ <u>Drafting suggestion:</u> “4. By [2 years after the entry into force of this Regulation], AMLA shall issue guidelines on the elements that obliged entities <del>should</del> shall take into account, <del>based on their nature, size and the outcome of their overall risk assessment</del>, when deciding on the extent of their internal policies, <del>controls and</del> procedures <b>and controls</b>.”</p>

	<p>SI Comments:</p> <p>SI:          Technical amendment to the sequence of wording: "... when deciding on the extent of their internal policies, procedures and controls."          Proofreading in this regard is needed throughout the whole AMLA Regulation and other AML package proposals, since many articles include reference to policies, procedures and controls.</p> <p>HU Comments:</p> <p>Regarding Article 7 (4) Hungary would support adopting L2 regulation rather than guidelines. Guidelines cannot be implemented in a legally binding documents which would be sufficient as Article 7 (4) determined requirements for the service providers ("shall take into account...")</p> <p>RO Comments:</p> <p><b>Agree</b></p> <p>ES Comments:</p> <p>We would add, in line with art. 7.1</p> <p><i>...based on their nature, size ,and the outcome of their overall risk assessment, and the complexity of their business</i></p>
<p><b>Article 8 - Risk assessment</b></p>	

<p><b>Title of Article 8</b></p> <p>"<b>Overall</b> risk assessment".</p>	<p>BE Comments:</p> <p>Ok</p> <p>SI Comments:</p> <p>SI: In accordance with EBA Risk factor Guidelines and the commonly used terminology in practice we propose to use “business-wide risk assessment” instead of “overall risk assessment”.</p> <p>HU Comments:</p> <p>Hungary would support that the text should refer to the institutional as well as to the individual (connected to the customers and business relationships) risk assessments (just like it is required in the EBA guidelines).</p>
<p><b>Article 8(1)</b></p> <p>« 1. Obligated entities shall take appropriate measures, proportionate to their <b>nature and</b> size, <b>as well as to the nature and complexity of their business</b>, 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</p>	<p>BE Comments:</p> <p>Ok but we should add the words “at least” at the end of the subparagraph in order to avoid the list could be interpreted as limitative:</p> <p>→ « 1. Obligated entities shall take appropriate measures, proportionate to their <b>nature and</b> size, <b>as well as to the nature and complexity of their business</b>, 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, <b>at least</b> : [...] »</p> <p>HU Comments:</p>

<p>and evasion of proliferation financing-related targeted financial sanctions, taking into account : [...] »</p>	<p>Hungary would like to maintain the reference of the supranational risk assessment (SNRA). There is no obligation that the NRA should cover the main findings of the SNRA.</p> <p>a) <i>the risk variables set out in Annex I and the risk factors set out in Annexes II and III</i></p> <p>b) <i>the findings of the supra-national risk assessment drawn up by the Commission pursuant to Article 7 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final];</i></p> <p>RO Comments:</p> <p><b>Agree</b></p> <p>ES Comments:</p> <p>Ok</p>
<p>“(c) the findings of the national risk assessments carried out by the Member States pursuant to Article 8 of <b>Directive</b> [please insert reference – proposal for 6<sup>th</sup> Anti-Money Laundering Directive – COM/2021/423 final]”</p>	<p>BE Comments:</p> <p>Ok</p>
<p><b>"(d) The relevant information for AML-CFT purposes published by international standard-setters</b></p>	<p>BE Comments:</p> <p>Ok but we should of course also refer to the relevant information/documents that will be published by AMLA itself or by the EU Commission (see for example the documents that will “replace” the <i>ESAs joint Opinion on the risks of money laundering and terrorist financing affecting the Union’s financial sector</i>, or the relevant conclusions of the report drawn up by the EU Commission pursuant to Article 6 of Directive 2015/849)</p>

	<p>→ <b>«d) The relevant information for AML-CFT purposes published by international standard-setters or, at European level, by the Commission or by AMLA»</b></p> <p>HU Comments: Supported by Hungary.</p> <p>DE Comments: <b>Question of proportionality as it may not be easy to identify which published information may be relevant.</b></p> <p>RO Comments: <b>Agree</b></p> <p>LT Comments: To be specified for the sake of clarity</p>
<p><b>(e) The information on money laundering and terrorist financing risks provided by relevant national authorities, including supervisors or financial intelligence units.'</b></p>	<p>BE Comments: Ok</p> <p>SI Comments: SI: Clarification is needed with regard to the meaning of the term “national authorities”. We propose to use the definition of authorities used within the AML package. According to AMLR supervisors and FIUs are included in the term “competent authority”.</p>

	<p>HU Comments: Supported by Hungary.</p> <p>RO Comments: <b>Agree</b></p>
<p><b>Article 8(2)</b></p> <p>"2. The risk assessment drawn by the entities compliance to paragraph 1 shall be documented, kept up-to-date and <b>shall be</b> made available to supervisors <b>upon request.</b>"</p>	<p>NL Comments: This can be deleted as this is already in the text below, right?</p> <p>BE Comments: Ok</p> <p>HU Comments: Supported by Hungary, with the additional reference to the new Paragraph 1a (addition in bold): <i>The risk assessment drawn by the entities in compliance with paragraphs 1 <b>and 1a.</b> [...]</i></p> <p>DE Comments: <b>As stated in the FATF recommendation quoted, it should be specified that this requirement is for financial institutions. Otherwise it may result in uncertainties about what is expected from small and medium-size obliged entities.</b></p> <p>RO Comments: <b>Agree</b></p>

	<p>ES Comments: OK</p>
<p><b>"1a. Prior to the launch of new products, services or business practices, including the use of new distribution mechanisms and new or developing technologies, in conjunction with new or pre-existing products and services, 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."</b></p>	<p>MT Comments: Malta agrees with the proposed amendment however proposes the following drafting suggestion (in bold) in order to ensure that consistent terminology is used:  <i>"1a. Prior to the launch of new products, services or business practices, including the use of new distribution <del>mechanisms</del> <b>channels</b> and new or developing technologies, in conjunction with new or pre-existing products and services, 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."</i></p> <p>BE Comments: Ok</p> <p>RO Comments: <b>Agree</b></p> <p>LT Comments: <b>"1a. Prior to the launch of new products, services or business practices, including the use of new distribution <del>mechanisms</del> <b>channel</b> and new or developing technologies, in conjunction with new or pre-existing products and services or before starting to provide an existing financial service (product) to a new customer segment, in a new geographical area obliged entities shall identify and</b></p>

	<p><b>assess, in particular, the related money laundering and terrorist financing risks and take appropriate measures to manage and mitigate those risks."</b></p> <p>ES Comments:</p> <p>Ok. We would also add that this specific assessment of potential risks of new products, services and practices be documented and made available to the supervisor, as in 8.2 of the AMLR.</p> <p><i>This assessment shall be documented and be made available to supervisors upon request.</i></p>
<p>"2. The risk assessment drawn up by the obliged entity pursuant to paragraph 1 shall be documented, kept up-to-date, <b>regularly and in any internal of external event that significantly affects the activities, products, transactions, distribution channels, customers or locations of the obliged entity</b>, and <b>shall be</b> made available to supervisors <b>upon request"</b></p>	<p>MT Comments:</p> <p>Malta agrees with the PCY amendments however proposes that, <u>in addition</u> to instances outlined in paragraphs 1a and 2, the risk assessment is also reviewed in instances where <i>new threats or vulnerabilities are identified, independently of whether the situations under paras 1 and 2a materialise or not</i>. Additionally, Malta proposes that in the absence of the above, the OE is to consider whether there have been any other changes that may affect the reliability and relevance of the Business Risk Assessment <u>on an annual basis</u>.</p> <p>Without prejudice to the above, Malta would also like to suggest the following amendments (marked in bold) to paragraph 2 for further clarity:</p> <p><i>"2. The risk assessment drawn up by the obliged entity pursuant to paragraph 1 shall be documented, kept up-to-date, <b>regularly</b> and <b>regularly reviewed, including in where any internal of or external event that</b> significantly affects the activities, products, transactions, distribution channels, customers or locations of the obliged entity, and shall be made available to supervisors upon request"</i></p> <p>BE Comments:</p>

	<p>we do agree with the addition of these elements, subject to slight wording revisions:</p> <p>“2. The risk assessment drawn up by the obliged entity pursuant to paragraph 1 shall be documented, kept up-to-date, <b>regularly and whenever in any internal or external event occurs that could significantly affects the ML/TF risks associated to the customers, activities, products, transactions, distribution channels, customers or geographical zones of activities locations of the obliged entity, and shall be</b> made available to supervisors <b>upon request</b>”</p> <p>HU Comments:</p> <p>Technical correction in Article 8.2 (deleting a comma):  <i>[...] documented, kept up to date regularly [...]</i></p> <p>RO Comments:</p> <p><b>Agree</b></p> <p>ES Comments:</p> <p>Ok</p>
<p><b><u>Article 9 - Compliance functions</u></b></p>	
<p><b>Article 9(4)</b></p> <p>“4. Obligated entities shall provide the compliance functions with adequate resources, including staff and</p>	<p>BE Comments:</p> <p>Ok</p> <p>In addition, we suggest the following revisions:</p> <p>1) <u>in Article 9(1):</u></p>

<p>technology, in proportion to the size, nature and risks of the obliged entity for the <b>effective performance of their tasks, implementation of compliance functions</b>, and shall ensure that the persons <b>responsible for those functions are granted</b> the powers to propose any measures necessary to ensure the effectiveness of the obliged entity's internal policies, controls and procedures <b>are granted to the persons responsible for those functions.</b>"</p>	<p>»1. <i>Obliged entities shall appoint one natural person executive member of their <del>board of directors or, if there is no board, of its equivalent governing</del> <b>legal administration body</b> who shall be responsible for the implementation of measures to ensure compliance with this Regulation ('compliance manager'). Where the entity has no <del>governing legal administration</del> body, the function should be performed by a member of its senior management.«</i></p> <p>→ <u>Explanation:</u> Since the scope rationae personae of the regulation is very broad, the wording used should be as broad as possible to be appropriate in all cases likely to arise. Indeed, in the absence of a harmonized EU framework with respect to corporate law, the various functions in the governance of legal entities may indeed differ between MS. This issue is however not specific to the AML Regulation.</p> <p>2) <u>In Article 9(2):</u></p> <p>»2. <i>The compliance manager shall be responsible for <b>ensuring an appropriate consideration for the AML/CFT matter at the highest management level of the obliged entity. She/he is namely 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 procedures.</b> ensuring that all appropriate proposals are submitted and discussed for decision at the highest management level of the obliged entity, for ensuring that appropriate internal policies, procedures and controls are defined and effectively implemented. She/he is responsible for making all needed proposals to the legal management body for ensuring that appropriate human and technical resources are allocated by the obliged entity to the establishment and effective implementation of its AML/CFT internal policies, procedures and controls, and for <del>receiving</del> <b>ensuring that information on significant or material weaknesses in such policies, procedures and controls are duly taken into account to remedy these weaknesses.</b> The compliance manager shall regularly report on those matters to the <del>board of director or equivalent governing body</del> <b>legal administration</b> body. For parent undertakings, that person shall also be responsible for overseeing group-wide policies, controls and procedures."</i></p> <p>→ <u>Explanation:</u> (i) The main responsibility of this person consists in our view in ensuring an appropriate "AML compliance culture" at the highest level of management. This should be stated as his very first duty; (ii) "receiving information" cannot be considered as responsibility.</p>
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	<p>3) <u>In Article 9(3) subparagraph 1:</u>          »3. Obligated entities shall have a <b>specialised</b> compliance officer (<b>AMLCO</b>), to be appointed by the <del>board of directors or governing</del> <b>legal administration</b> body, who shall be in charge of the day-to-day <del>management operation</del> of the obliged entity's anti-money laundering and countering the financing of terrorism (AML/CFT) policies, <b>procedures and controls</b>. <b>She/he shall ensure that the AML/CFT internal policies and procedures are effectively and consistently applied throughout all the internal structures of the obliged entity. She/He should have an intrusive power in the customer's acceptance process where high risks associated with the potential customer or business relationship are detected. That person shall also be responsible for analysing atypical transactions detected through the monitoring systems implemented and for reporting suspicious transactions to the Financial Intelligence Unit (FIU) in accordance with Article 50(6).</b>«</p> <p>→ <u>Explanation:</u> Distinction should be made between the general compliance function as required by the prudential rules (for those OE subject to these rules) and the specialised compliance officer specifically in charge of the AML/CFT systems.          Moreover, the AMLCO should not be required to conduct by himself all the OE's day-to-day AML/CFT operations.          According to the "3 lines of defences" model applicable to financial institutions, the AMLCO (2<sup>nd</sup> line) should be responsible for ensuring that all staff in direct contact with customers and transactions (1<sup>st</sup> line) effectively implement the AML/CFT internal policies and procedures that are applicable in the framework of their functions.          Additionally, the AMLCO must have specific AML/CFT responsibilities among which an intrusive power in the customer's acceptance process where high risks are detected, the responsibility for the analysis of atypical transactions detected through the monitoring systems for deciding if they are suspicious.</p> <p>4) Finally, we consider <u>Article 7(3) subparagraph 2</u> should be clarified as regard what is expected from the compliance officer (is it required from the compliance officer that he ensures that the senior management and BO act with honesty and integrity and that the senior management possess sufficient knowledge? If yes it should be stated more clearly).</p>
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	<p>SI Comments:</p> <p>SI: We propose minor consistency suggestions: “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 obliged entity for the <b>effective performance of their tasks, implementation of compliance functions,</b> and shall ensure that the persons <b>responsible for those functions are granted</b> the powers to propose any measures necessary to ensure the effectiveness of the obliged entity’s internal policies, <b>procedures and controls are granted to the persons responsible for those functions.</b>”</p> <p>HU Comments: Supported by Hungary.</p> <p>We also suggest to further elaborate in L1 text the roles and responsibilities of the compliance officer and the compliance manager.</p> <ul style="list-style-type: none"><li>– granting the compliance officer power to access any relevant information held by the obliged entity;</li><li>– defining strict conditions under which the employment contract of a compliance officer may be terminated;</li><li>– the rights of a compliance manager/officer to take AML/CFT related decisions as defined in the AMLD shouldn’t be harmed or unduly influenced (e.g. by the interests or decisions of the core business areas);</li><li>– de minimis fit and proper criteria regarding relevant AML/CFT education and expertise to fill in the position and perform the activity of a compliance manager/officer;</li></ul>
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	<ul style="list-style-type: none"> <li>- rights, powers, and duties of the compliance manager (e.g. management approval for customer relationships and terminating business relationships when it is deemed necessary);</li> <li>- protection of the rights of the compliance manager/officer;</li> <li>- if the compliance officer function is outsourced, all necessary information should be provided for the person understanding the risks, risk appetite and AML functions, activities, controls of the entity to be able to make decisions and to assess the need for filing an STR (understanding and assessing unusualness).</li> </ul> <p>RO Comments:</p> <p><b>Agree</b></p> <p>ES Comments:</p> <p>We would add, in line with art. 7.1</p> <p><i>...in proportion to the size, nature, ML/TF risks of the obliged entity and the complexity of its business, for the effective performance of their tasks,</i></p>
<p><b><u>Article 10 - Awareness of requirements</u></b></p>	
<p>“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 <b>overall risk assessment</b>, internal policies,</p>	<p>BE Comments:</p> <p>Ok subject to the slight following revisions <u>in the second subparagraph</u>:</p> <p><i>“The measures referred to in the first subparagraph shall include the participation of employees, <b>as well as their agents and distributors</b>, 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 <b>appropriate</b></i></p>

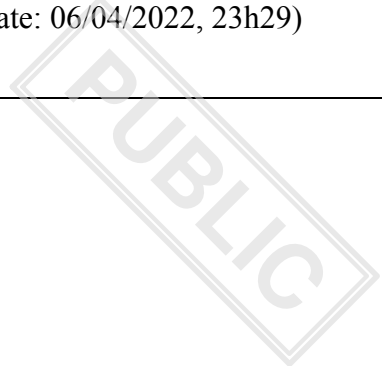
<p>controls and procedures in place in the obliged entity, including in relation to the processing of personal data for the purposes of this Regulation.</p> <p>The measures referred to in the first subparagraph shall include the participation of employees in specific, ongoing training programmes to help 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 <b>appropriate to the functions or activities of their employees and to the risks of money laundering and terrorist financing of the obliged entity and shall be</b> duly documented.”</p>	<p><b><i>as regard their <del>to the</del> functions or activities of their employees and the risks of money laundering and terrorist financing to which <del>of the obliged entity</del> is exposed and shall be</i> duly documented.”</b></p> <p>SI Comments:</p> <p>SI: Please see comment to Article 8 above.</p> <p>HU Comments: Supported by Hungary.</p> <p>RO Comments: <b>Agree</b></p>
<p><b><u>Article 11 - Integrity of employees</u></b></p>	
<p>“4. This Article shall not apply to <b>cases obliged-entities that are sole traders where the obliged entity is a natural person or a legal person whose activities are performed by one natural person only.</b>”</p>	<p>HU Comments: Supported by Hungary.</p> <p>RO Comments: <b>Agree</b></p>

<u>Article 12 - Situation of specific employees</u>	
<p><b>“(27a) Where natural persons carry out professional activities outside the financial sector which are covered by the requirements of this Regulation, as employees of a legal person, the obligations relating to internal policies, controls and procedures shall apply to that legal entity and not to the natural persons themselves.”</b></p>	<p>NL Comments:</p> <p>We see what the Presidency is trying to do here and appreciate the effort, but we fear that this could lead to some discussions about whom within the OEs mentioned in article 3(3) AMLR can be deemed to be active outside the financial sector. For instance, TCSPs. If the idea is to exclude credit institutions and financial institutions then it might be helpful to just mention that explicitly.</p> <p>SI Comments:</p> <p>SI:</p> <p>By explicitly pointing out the obligations relating (only) to internal policies, procedures and controls, the question arises, what about all the other obligations, set out in the Regulation (e.g. customer due diligence, data retention...)? In our view, first it has to be clarified, what is the status of an obliged entity (whether natural or legal person), and further, on what legal ground is somebody conducting AML/CFT measures: on ground of being a sole proprietor in one’s professional capacity in branches/professions referred to in Art 3(3), or on ground of an employment contract. If the latter is the case, the person (natural or legal) which is the “employer” is to be considered as the obliged entity and hence is responsible for all the obligations set out in this Regulation, not only those related to internal policies.</p> <p>HU Comments:</p> <p>Hungary supports maintaining the original Commission text as well with a reference to determined DNFBPs.</p>

	<p><i>Where a natural person falling within any of the categories listed in <b>Article 3, point (3)</b> 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.</i></p> <p>RO Comments: <b>Agree</b></p> <p>LT Comments: <b>We suggest to keep the current text. Under the proposed text, financial institutions would not be liable as a legal entity for improper implementation of the AML.</b></p> <p><b>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.</b></p>
<p><b>B Points</b></p>	
<p><b><u>Article 7 - Scope of internal policies, controls and procedures</u></b></p> <p><b>Q1 Distinction between policies, procedures and internal controls</b></p>	

<p>Q1.1 Do Member States think that Article 7 should make a better distinction between policies and procedures on one hand and internal controls on the other hand?</p>	<p>MT Comments:</p> <p>While Malta <b>does not object</b> to clarifying the distinction between policies and procedures as opposed to internal controls, it should be kept in mind that in defining what such internal controls are, one must ensure that this will not decrease the flexibility needed by obliged entities in the interpretation and application of such internal controls.</p> <p>NL Comments:</p> <p>Making a better distinction might be helpful in making article 7 more clear and easier to apply for OEs.</p> <p>BE Comments:</p> <p><b>We support the Presidency’ suggestion</b> to better distinguish policies and procedures, on the one hand, and internal controls, on the other hand: it would facilitate the understanding of the requirements imposed on OEs.</p> <p>SI Comments:</p> <p>SI:</p> <p>We support a better distinction between policies/procedures and internal controls.</p> <p>FI Comments:</p> <p><b>FI:</b> we do not find this necessary, and support the COM text, but we can accept the proposal by the Presidency, if the majority so prefers.</p>
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	<p>LV Comments:</p> <p><b>LV support the proposal on clearer distinction between policies and procedures and internal controls.</b></p> <p>EL Comments:</p> <p><b>Yes</b></p> <p>HU Comments:</p> <p><b>Hungary supports making a distinction between policies/procedures and internal controls in order to ensure the compliance with the AML/CFT obligations.</b></p> <p>CZ Comments:</p> <p>Yes, we are open to better distinction between policies and procedures on one hand and internal controls on the other hand.</p> <p>IT Comments:</p> <p><i>Yes. This distinction is not merely formal; on the contrary, it reflects the different nature of policies and procedures, which are developed within the obliged entity, on the one hand, and the obliged entity's internal controls, aimed at ensuring a correct application of policies and procedures, on the other hand. Therefore, in our view it is useful to remark this difference in the text, for clarity's sake.</i></p> <p>DE Comments:</p> <p><b>Yes, we support this approach.</b></p>
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	<p>BG Comments: Yes</p> <p>RO Comments: yes</p> <p>SK Comments: Yes.</p> <p>LT Comments: Yes, we agree.</p> <p>PL Comments: PL agrees that better distinction between policies and procedures and internal controls is advisable.</p> <p>ES Comments: Yes</p>
<p>Q.1.2 If so, do the Member States agree with the amendments proposed by the Presidency?</p>	<p>MT Comments: Yes, Malta <b>agrees</b> with the proposed PCY amendments.</p>

	<p>NL Comments: Yes, see also our text suggestions under points A above.</p> <p>BE Comments: <b>yes</b></p> <p>SI Comments: SI: We could support the amendments proposed by the PCY</p> <p>LV Comments: <b>Yes.</b></p> <p>EL Comments: <b>Yes we agree</b></p> <p>HU Comments: <b>Hungary can accept the amendments suggested by the Presidency to emphasise the importance of internal controls.</b></p>
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	<p>CZ Comments: Yes, we agree with the proposal of the Presidency.</p> <p>IT Comments: <i>Yes. Please refer to our comment above.</i></p> <p>RO Comments: <b>yes</b></p> <p>SK Comments: <b>Yes.</b></p> <p>LT Comments: <b>Yes, we agree.</b></p> <p>PL Comments: We can agree with the amendments proposed by the Presidency.</p> <p>ES Comments: Yes. However, we do believe that the level of approval for policies should be raised, so as to be approved by the management body or equivalent. For procedures, which are developments of the general policies, the level of approval could remain at senior management level.</p>
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	<i>The internal policies shall be approved by the board of directors or, if there is no board, its equivalent governing body. Internal procedures shall be approved, at least, at the senior management level.</i>
<b>Q2. Organisation of internal control</b>	
<b>1) The organizational principles of internal control</b>	
Q2.1 Do Member States prefer Option 1 or Option 2?	<p>MT Comments: In view of the replies to Q1, Malta would prefer <b>option 2</b>.</p> <p>NL Comments: Option 2.</p> <p>BE Comments: <b>Option 2.</b> We believe that clarifying the organisation of internal control by mentioning the three lines of defense (taking into account the proportionality principle) will clearly enhance the efficiency of the internal control framework and provide NCAs with legal basis to exercise the sanctioning powers.</p> <p>SI Comments: SI:</p>

	<p>We prefer Option 2.</p> <p>From the consistency point of view throughout the Regulation and other AML package proposals, we propose to unify the use of term “controls” / “internal controls”. Currently there is a mix of both throughout the proposals. Also not all the 1<sup>st</sup> level controls are centralised in the AML/CFT function and may be carried out by other employees (payment department, relationship manager etc.).</p> <p>To provide more clarity we propose the following amendments to point (b):</p> <p><b>(b) (internal) controls that include:</b></p> <p><b>(i) controls carried out by operational functions <del>in the field of</del> when carrying out AML-CFT related tasks;</b></p> <p><b>(ii) controls by <del>staff supporting</del> the compliance functions pursuant to Article 9, performed by persons other than the ones referred to in point (i), to ensure the implementation of the policies, procedures and controls mentioned in a) in all the obliged entity’s activities, including activities carried out agents and distributors or outsourced to external service providers, in order to ensure compliance with the requirements of this Regulation;</b></p> <p><b>(c) (iii) an independent audit function to test the internal policies, controls and procedures referred to in point (a); and the controls referred to in point (i) and (ii).”</b></p> <p>FI Comments:</p> <p><b>FI:</b> support Option 2</p> <p>LV Comments:</p> <p><b>LV would strive for some level of harmonization in the AML Regulation (L 1 legislation) on elements of internal controls. Proposed option 2 is a step forward.</b></p> <p>EL Comments:</p>
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	<p><b>Option 2 - It is crucial to maintain the distinction between the 3 lines of defense and include explicit and comprehensive provisions in this regard to ensure effective and homogeneous implementation.</b></p> <p>HU Comments:</p> <p><b>Hungary has a preference for Option 2, to specify in Article 7 of AMLR the substantial elements of both levels of internal control and the independent audit function. This would fit more the requirements of the relevant FATF Recommendations.</b></p> <p><b>On proportionality considerations exemptions/more flexible rules could be applied under strict conditions (based on complexity and size, but always taking into account the risk profile of the OE).</b></p> <p>CZ Comments:</p> <p>We prefer option 1.</p> <p>IT Comments:</p> <p><i>We are in favour of Option 2, because it is key that a 3-Level-of-Defence (3-LoD) model is adopted also in non-financial obliged entities.</i></p> <p><i>However, proportionality should be ensured, as well as consistency with sectoral financial rules already requiring the establishment of a 3-LoD model for internal control systems. These aspects, as well as the specific tasks of the 1<sup>st</sup> level (i.e. controls embedded within the business procedures) and the 2<sup>nd</sup> level of defence (AML compliance controls) may be clarified further in level-2 guidelines to be developed by AMLA.</i></p> <p>DE Comments:</p>
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	<p><b>We support option 2 and the amendments suggested by the Presidency with reference to the 3-lines-of-defence model.</b></p> <p>BG Comments:</p> <p>We prefer Option 2. Drafting should also consider the relevant EBA guidelines.</p> <p>RO Comments:</p> <p><b>As a preliminary to the answer, we would like to note that the current regulation focuses particularly on the financial sector, and is therefore inapplicable or very difficult to apply within non-financial sectors that have a totally different way of organising. If previously the Directives that regulated the field paid particular attention to the financial sector, and the entities in the non-financial fields tried to adapt to those requirements to the extent possible, we believe that in the context of the current Regulation, which must be directly applicable, a separate regulation of the two sectors is necessary, taking into account the particularities of those entities.</b></p> <p><b>In the context of the discussion on how to organize internal controls and compliance functions, it can be seen that the functional models for financial entities are inadequate for the forms of organization of the liberal professions, for example.</b></p> <p><b>Therefore, we consider that both proposed options are sustainable, but with different recipients, namely option 1 for the non-financial sector and option 2 for the financial sector.</b></p> <p><b>Where Option 2 is chosen and proportionality clauses are introduced, in order to ensure a harmonized approach at European level, it would be useful for the Regulation to also set out the thresholds on which it is possible to apply a derogation / exemption.</b></p> <p>SK Comments:</p>
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	<p><b>We prefer Option 1.</b></p> <p>LT Comments:</p> <p><b>We prefer Option 2.</b></p> <p>PL Comments:</p> <p>PL prefers option 1 as it allows for greater degree of flexibility in internal organisation of the OE.</p> <p>ES Comments:</p> <p>Option 2</p>
<p>Q2.2 If Member States prefer Option 2, do they agree with the amendment proposed by the Presidency?</p>	<p>MT Comments:</p> <p>Yes, Malta agrees with the PCY amendments, however, for further clarity, Malta suggests the following amendments (marked in bold):</p> <p><i>"(b) internal controls <del>that include</del> including:</i></p> <p><i>(i) controls carried out by operational functions in the field of AML-CFT;</i></p> <p><i>(ii) controls by staff supporting the compliance functions pursuant to Article 9, performed by persons other than the ones referred to in point (i), to ensure the implementation of the policies <b>and</b> procedures <del>and controls</del> mentioned in <b>point</b> (a) in all the obliged entity's activities, including activities carried out <b>by</b> agents and distributors or outsourced to external service providers, in order to ensure compliance with the requirements of this Regulation;</i></p>

	<p><i>(iii)an independent audit function to test the internal policies, <b>controls</b> and procedures referred to in point (a); and the controls referred to in points <b>(b)(i) and (ii).</b>”</i></p> <p>NL Comments:</p> <p>Yes.</p> <p>In addition, we would like to reiterate that with enshrining outsourcing and similar arrangements in article 7 para 2, we deem it unnecessary and disproportionate to limit the tasks that can be outsourced to the extent that is currently proposed in article 40 para 2. We think including outsourcing here perfectly clarifies that a) the OE is responsible for outsourcing and could never outsource responsibility for compliance and b) the OE has to be in control of outsourcing arrangements. This renders the extent of the limitation currently proposed in article 40(2) unnecessary and disproportionate.</p> <p>BE Comments:</p> <p><b>Yes</b></p> <p>SI Comments:</p> <p>SI:</p> <p>We agree with the proposed amendment, however would support the introduction of a proportionality clause and additional reference to outsourcing provisions, so that smaller obliged entities would not be overburdened.</p> <p>FI Comments:</p> <p><b>FI:</b> agree</p>
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	<p>LV Comments:</p> <p><b>Yes, but it should be amended with a proportionality clause due to a large number of obliged entities with only one or very few natural persons performing activities.</b></p> <p>EL Comments:</p> <p><b>Yes we agree with the amendment proposed</b></p> <p>HU Comments:</p> <p><b>Hungary agrees with the Presidency proposal.</b></p> <p>IT Comments:</p> <p><i>In general yes, but with the following amendment: <b>any reference to a specific “function”</b> (which seems to be related to an organizational structure) <b>should be replaced by a general reference to the relevant “controls”</b> (which is focused on activities effectively carried out) in order to ensure full consistency with sectoral rules applying to financial obliged entities.</i></p> <p><i>In sectoral rules, indeed, <b>the 3-LoD controls are always performed, even when a control function is not established and maintained as an independent function in line with the principle of proportionality</b> (for example, this is possible under MiFID II framework for the risk management function and the internal audit function (see delegated regulation (UE) 565/2017, art. 23-24).</i></p> <p><i>In the light of this, we believe that the reference to “controls”, instead of “functions”, would ensure that ML-FT risks are adequately addressed, while guaranteeing sufficient flexibility to adapt to sectoral rules.</i></p> <p>DE Comments:</p>
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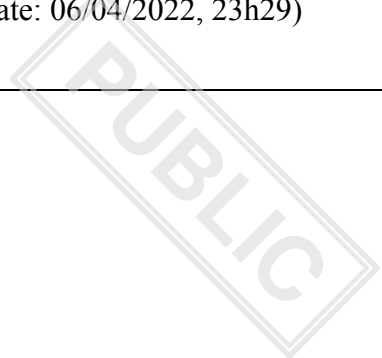
	<p><b>We would welcome a proportionality clause for small and lower-risk obliged entities.</b></p> <p>SK Comments:</p> <p><b>Not relevant – see answer to Q 2.1</b></p> <p>LT Comments:</p> <p><b>Yes, we agree with the proposed amendment.</b></p> <p>ES Comments:</p> <p>We advocate here not to make a closed list of controls, so that it is read that both “<i>may include</i>” or “<i>shall include, but not limited to...</i>”, given that although we are in favour of the three lines of defence in the control framework, we will not give up an element of control that has allowed us to raise the efficiency of our supervision to the current high levels of qualification.</p> <p>We allude here to the structured “<b>annual external expert report</b>” on the policies, procedures and internal controls, to be made by most of our obliged entities, approved by their managers and made available to the supervisors. The report is to detail the internal control measures in place, assessing their operational efficiency and, eventually, proposing changes or improvements as required.</p> <p>Therefore, we would suggest an addition to the presidency’s proposal, in order to foresee external reviews of the policies and procedures.</p> <p>Art. 7.2.b) internal controls that include:</p> <ul style="list-style-type: none"><li>(i) Controls carried out by operational functions (...)</li><li>(ii) Controls by staff supporting the compliance function (...)</li><li>(iii) An independent audit function (...)</li><li>(iv) Other controls such as assessments carried out by independent third parties on the adequacy and effectiveness of the policies, procedures and internal controls.</li></ul>
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	<p>Article 7.1 already introduces proportionality for the establishment of these controls. AMLA Guidelines foreseen in article 7.4 could develop when is it appropriate to be subject to external assessments.</p> <p>Otherwise, a reference to keeping the external audits that are already required by MS should be added to the Regulation.</p>
<p><b>2) Proportionality principle</b></p>	
<p>Q2.3 Do Member States prefer Option 1 or Option 2?</p>	<p>MT Comments:</p> <p>Malta favours <b>option 2</b> as this allows for the required flexibility needed to address the realities of smaller OEs. This option therefore allows for the extent of such compliance and audit controls to reflect the size, complexity and risk posed by the OE.</p> <p>NL Comments:</p> <p>We prefer option 2.</p> <p>BE Comments:</p> <p><u>For the second line of defense (compliance functions):</u> We can support <b>option 2</b> since fully exempting some obliged entities from the obligation to implement compliance function would not be in line with the FATF recommendations. However, as suggested, we believe that the nature and extent of compliance controls and internal audit controls should take into account the size, complexity of the activity and risks posed by obliged entities.</p>

	<p>As a result of this proportionality principle, under Belgian law, it may be acceptable that an obliged entity:</p> <ul style="list-style-type: none"><li>- merges the functions of AMLCO and compliance manager (particularly when the obliged entity is a natural person); or</li><li>- outsource all or some of the tasks of the AMLCO (the tasks but not the liability).</li></ul> <p><u>For the third line of defense (internal audit functions):</u> we can also support <b>option 2</b>, with a nuance for small entities: for those entities, AMLR should only provide for the obligation to implement an independent audit function <u>where appropriate with regard to the size and nature of the business of the obliged entity</u>, as sometimes it will not be justified for small entities – legal or natural persons – to implement such an audit function and sometimes it could well be justified even for small entities according to the risk ML/FT associated with the conduct of their business activities.</p> <p>SI Comments:</p> <p>SI: We prefer Option 2 and propose criteria and reference on the number of employees, on the minimum time period during which an audit has to be conducted (longer periods for smaller and less risky OEs) and similar, this should be more in detail delt with in L2 framework.</p> <p>FI Comments:</p> <p><b>FI:</b> supports Option 2</p>
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	<p>LV Comments:</p> <p><b>Only the internal audit function as well as second line of defence or compliance control function could be an exemption from overall obligations in the view of proposed Option 1. The decision regarding the non-application of the internal audit function and the compliance control function could be made by the supervisory authority considering such factors as the scope of the activity and risk exposure. From the proposed scenarios LV support option 2.</b></p> <p>EL Comments:</p> <p><b>Option 2 – We are not in favour of an exemption from the requirement to have compliance controls (performed by the second line of defence). Such exception if combined with the flexibility agreed on the requirement to have internal control function could lead to a complete lack of control mechanisms.</b></p> <p>HU Comments:</p> <p><b>Hungary has a preference for Option 2, i.e. to set out a general obligation to implement both levels of control and the independent audit function for all OEs, but allowing flexibility (less severe rules) under strict conditions (based on complexity and size, but always taking into account the risk profile of the OE).</b></p> <p>CZ Comments:</p> <p>Because of better alignment with FATF Recommendations, we prefer option 2. However, we would like to note that according to our opinion, option 2 may under some circumstances have the same effect as option 1, i.e. the extent of the compliance controls and internal audit controls may be so diminished that it equals an exemption.</p>
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	<p>IT Comments:</p> <p><i>We stand for Option 1 since it ensures more flexibility in the framework and that the principle of proportionality is adequately taken into account and applied, also considering the risk-based approach.</i></p> <p><i>We agree with the inclusion of the proposed criteria, and also suggest taking into account the scale and complexity of the activities and services of the obliged entities.</i></p> <p><i>Moreover, in our view it should be clarified in the level-1 text that the requirement:</i></p> <ul style="list-style-type: none"><li><i>i) should not apply to obliged entities that are <b>natural persons</b>;</i></li><li><i>ii) should apply to obliged entities that are legal persons <b>according to proportionality and on a risk-based approach.</b></i></li></ul> <p>DE Comments:</p> <p><b>We suggest to stay with the wording in Article 8 para 4 letter b of the current AMLD (which corresponds with the suggestion in option 2):</b></p> <p><i>... 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).</i></p> <p>BG Comments:</p> <p>We prefer Option 1</p> <p>RO Comments:</p> <p><b>We consider that both proposed options are sustainable, but with different recipients, namely option 1 for the non-financial sector and option 2 for the financial sector.</b></p>
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	<p>SK Comments: <b>We prefer Option 2.</b></p> <p>LT Comments: <b>We prefer Option 2.</b></p> <p>PL Comments: PL prefers option 1.</p> <p>ES Comments: We do prefer a mixed option where: a) The compliance function cannot be exempted for any obliged entity, given the fact that they are ultimately responsible for compliance with AML/CFT obligations. In addition, art. 9.6 already provides for proportionality for small or single-employee entities. The internal audit function that can be exempt where not required by prudential regulation or any specific regulation depending on the risk, size and nature of the business. E.g. a law firm or a jewellery store....</p>
<p><b>3) Articulation of the provisions of the draft AMLR with national company law</b></p>	
<p>Q2.4 Do Member States consider that obliged entities which are required to carry out "general" internal control should not be</p>	<p>MT Comments:</p>

<p>exempted from AML/CFT internal control, particularly with regard to the internal audit function?</p>	<p>Taking into account Malta’s reply to Q2.3, i.e., that there should not be a blanket exemption, it would stand to reason that such a problem would not arise. Indeed, it would most likely be the case that where the imposition of an internal audit function is prompted from a prudential perspective, such circumstances would also very likely trigger the imposition of such a requirement from an AML/CFT perspective.</p> <p>NL Comments:</p> <p>We agree that obliged entities which are required to carry out general internal control should not be exempt.</p> <p>BE Comments:</p> <p><b>Yes.</b> In each case where an independent audit function is required by prudential rules, the audit scope of this function shall in any case include the AML/CFT mechanisms in place within the concerned obliged entity, with no possible exemption.</p> <p>SI Comments:</p> <p>SI:</p> <p>Obliged entities required to carry out “general” internal controls should not be exempted from AML/CF controls.</p> <p>FI Comments:</p> <p><b>FI:</b> Those entities should not be exempted from the AML/CFT internal control. However when assessing this from the angle of risk based approach, is it possible that the AML/CFT risk could be low in some of those entities (for example a publicly listed company)?</p>
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	<p>LV Comments: <b>Yes, should not be exempted.</b></p> <p>EL Comments: <b>Yes. For an obligated entity which is required to put in place an internal control system under prudential regulation and to establish an Internal Audit function in order to carry out general internal controls, it would be oxymoron to specifically exempt the entity from the requirement to carry out AML controls as if they were less important than the general controls.</b></p> <p>HU Comments: <b>Hungary fully agrees with the approach that no exemption should be granted to OEs from the AML/CFT internal control and internal audit requirements if their relevant (sectoral/prudential) rules include these requirements at more general level.</b></p> <p>CZ Comments: Yes, where the sectorial legislation provides for requirement of audit function, this should be mirrored in the AML/CFT field.</p> <p>IT Comments: <i>In general yes, because all obliged entities are exposed to ML risks. However, in our view it is of the utmost importance that <b>consistency is ensured between the AML framework and the existent sectoral « general » framework, in order to address ML risks adequately, while</b></i></p>
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	<p><i>avoiding excessive organisational burdens for obliged entities. In this perspective, we deem important that the AML internal control requirement is designed in a way that permits to the maximum possible extent <b>integration with existent sectoral rules on internal control systems</b>; most of our comments provided in this document pursue this objective (this is why, e.g., in Q2.1, we propose that Option 2 be amended to generally refer to «controls» and not to specific «control functions»).</i></p> <p>DE Comments:</p> <p><b>With the wording suggested in our response to Q2.3, this issue would be addressed as well.</b></p> <p>BG Comments:</p> <p>We consider that they should not be exempted.</p> <p>RO Comments:</p> <p><b>yes</b></p> <p>SK Comments:</p> <p><b>Yes.</b></p> <p>LT Comments:</p> <p>Yes, however proportionality clauses should not be undermined.</p> <p>PL Comments:</p>
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	<p>PL is of the opinion that obliged entities which are required to carry out "general" internal control should not be exempted from AML/CFT internal control.</p> <p>ES Comments: Ok</p>
<p>Q2.5 What solutions do Member States recommend to ensure that provisions of AMLR regarding AML/CFT internal control are properly integrated into the "general" internal control framework resulting from national transposition measures of the sectoral European Directives?</p>	<p>MT Comments: Malta is of the view that it is important for sectoral European Directives to cross-reference AML/CFT requirements pertaining to internal controls and that the prudential regulator, when making checks and assessing procedures, should communicate with the AML/CFT competent authority so as to ensure that positions adopted by both authorities are aligned.</p> <p>NL Comments: Perhaps it might be helpful to have AMLR set out a sort of minimum which can be topped-up in sectoral rules for certain entities subject to sectoral rules.</p> <p>BE Comments: We believe it necessary to make a clear distinction between the mission of the AML/CFT internal control and its organization. The mission of the AML/CFT internal control should be the same in all obliged entities. However, the organization of this control will differ, depending on whether or not the obliged entities are already subject to prudential regulations providing for a general internal control. To achieve that purpose, we suggest that the AMLR:</p>

	<ul style="list-style-type: none"><li>- Clearly enumerates the mission of the AML/CFT internal control (the tasks of the AML/CFT internal control functions); and</li><li>- clearly provides that the organisation of the AML-CFT internal control is integrated into the organisation of the general internal control provided for by prudential regulations applicable to obliged entities;</li><li>- specifically details the organization of the AML/CFT internal control applicable to those obliged entities that are not subject to such prudential requirements.</li></ul> <p>However, the answer to this question Q2.5 will also depend on the decision to be made to potentially exempt some categories of obliged entities from the obligation to have an AML compliance function in place (see Q2.3).</p> <p>SI Comments:</p> <p>SI:</p> <p>A general wording on that matter should satisfy legal clarity. The requirement regarding internal controls should be included at the supranational level (AMLR), where also the material obligations exist.</p> <p>In this regard we would like to point out that having requirements to implement controls in several regulations (national or supranational) does not mean a duplication of such controls. Obligated entity will in their control environment include (and optimise) controls required from different regulations (from prudential and AML/CFT regulations).</p> <p>LV Comments:</p>
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	<p><b>The provisions of AMLR regarding AML/CFT internal control should allow those functions to be also performed by the internal control framework resulting from transposition measures of the sectoral EU directives by providing adequate resources and competency for ensuring the effectiveness of internal control.</b></p> <p>HU Comments:</p> <p><b>Hungary proposes making an explicit provision in AMLR to make it clear that the exemption under Q2.3 may not be granted to these types of OEs, and that the AML/CFT control measures may be developed and functioning within the framework of the measures put in place to comply with the prudential rules.</b></p> <p>CZ Comments:</p> <p>We prefer to include in AMLR a general wording according to which where obliged entities shall set up internal control framework under sectorial legislation, such framework shall also reflect AML/CFT aspects.</p> <p>IT Comments:</p> <p><i>Please refer to the answer in Q2.4, above.</i></p> <p>DE Comments:</p> <p><b>See response to Q2.4.</b></p> <p>SK Comments:</p> <p><b>N/A</b></p>
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	<p>LT Comments: Currently we do not have solutions and are open to discuss this question further.</p> <p>PL Comments: We are not convinced if any legislative solutions are required to integrate AML/CFT internal control into the "general" internal control framework. We are of the opinion that the issue of organising internal controls is an internal issue of the OE and should be left for OEs to decide. In any case we think that guidelines issued under the legal base stipulated in art. 7(4) would be sufficient to precise this issue.</p> <p>ES Comments: Same option (mixed) as in Q.2.3</p>
<p><b>Article 8 - Risk assessment</b></p> <p><b>Q3 Documents to be considered for elaborating risk assessment</b></p>	<p>SI Comments: <b>SI:</b> <b>Please also see amendments above (under point A)</b></p>
<p>Q.3 Do Member States wish to remove the reference to the supranational risk assessment of the European Commission from the documents to be taken into account by obliged entities subject to the risk assessment requirement under</p>	<p>MT Comments: Malta is of the opinion that reference to the SNRA is to be kept in order to ensure that OEs read and take into account such SNRA. This is said also in light of the fact that the SNRA focuses on risks that are of a cross-border nature and would therefore be extremely useful for OEs which do not necessarily operate within a domestic context. The argument that the NRA</p>

<p>Article 8(1) AMLR (Option 1) or do they wish to keep this reference (Option 2)?</p>	<p>makes reference to the SNRA might not always hold when such NRA is published before the SNRA.</p> <p>NL Comments:</p> <p>We are in favour of option 2, as the SNRA provides an important cross-border risk analysis within the EU, which can be very relevant for OEs to take into account when performing their risk assessment. To mitigate the disadvantage mentioned by the Presidency, the SNRA could to be made available in all official languages and written with the knowledge that it will be used by OEs, facilitating its use by OEs throughout the EU.</p> <p>BE Comments:</p> <p>We are in favor of <b>option 2</b>, aiming at seeing maintained the reference to the supra-national risk assessment made by the Commission, as it presents a clear utility for the OEs operating cross-border; we think the disadvantage relating to the lack of translation of the SNRA in all the official languages of the Member States may be even more important if the OEs operating cross-border could only rely on the risk assessment performed at national level, that may be not translated in another language that the national one at all.</p> <p>However, we suggest a slight revision, consisting in referring to the “(b) <b>relevant</b> findings of the supra-national risk assessment [...]” as well as to the (c) “<b>relevant</b> findings of the national risk assessment [...]”.</p> <p>SI Comments:</p> <p>SI:</p> <p>Following the discussion, we don’t see the need for the removal of the reference to the SNRA. However, the understanding and the use of the SNRA by OEs in a material sense is what we should aim at, rather than a formalistic approach. We agree that e.g. especially OEs that carry out cross-border activities need to take into account the findings of the SNRA. On the other</p>
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	<p>hand, to some sectors (and within them a number of small OEs) the findings of the SNRA are not particularly relevant. With the aim not to overburden those OEs, we propose to make it possible for them to rely on their national competent authorities for pointing out any relevant input from the SNRA.</p> <p>FI Comments: <b>FI:</b> support the COM's proposal, option 2.</p> <p>LV Comments: <b>LV support Option 2 (keep the reference). While national risk assessment shall take into account conclusions from supranational risk assessment, it may not always provide a specific focus on elements that could be important for individual entities risk assessment.</b></p> <p>EL Comments: <b>Option 2</b></p> <p>HU Comments: <b>Hungary supports Option 2: to cover the full risk map of the EU Single Market, the findings of the SNRA, as well as the outcomes of the relevant NRA must be taken into consideration by OEs.</b></p> <p>CZ Comments: We prefer option 2.</p>
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	<p>IT Comments: <i>We see merit in keeping a reference to the Supranational Risk Assessment outcomes (Option 2).</i></p> <p>DE Comments: <b>We prefer to remove the reference to the supra-national risk assessment as it has to be considered for the national risk assessment, and that should be the relevant one for obliged entities.</b></p> <p>BG Comments: We prefer Option 2</p> <p>RO Comments: <b>Option 2</b></p> <p>SK Comments: <b>We prefer Option 2</b></p> <p>LT Comments: <b>We prefer Option 2, to keep the reference.</b></p> <p>PL Comments: We are in favour of removing reference to the supranational risk assessment (option 1).</p>
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	<p>ES Comments:</p> <p>Option 2. The SNRA may complement the NRA by identifying certain sectors, products or services that are not of high risk at the national level.</p>
<b>Q4 Approval of the risk assessment</b>	
Q.4 Do Member States prefer Option 1 or Option 2?	<p>MT Comments:</p> <p>Malta agrees with <b>option 2</b> in part – while Malta favours specifying the approval procedure of the risk assessment in the AMLR, L1 legislation should not go into the level of the detail required in specifying <i>how</i> the risk assessment should be developed.</p> <p>NL Comments:</p> <p>Option 1.</p> <p>BE Comments:</p> <p>We are in favor of <b>option 2</b>: we believe it should be specified in Article 8 paragraph 2 that the risk assessment shall be approved by the senior management (with a nuance for OE who are natural persons : for those entities, it could be foreseen that the approval of the risk assessment has to be done on the level of the natural person itself if she is not the AMLCO).</p> <p>SI Comments:</p> <p>SI:</p> <p>We support Option 2. We see the task of conducting a risk assessment to be a fundamental task for obliged entities. A proper risk assessment is of key importance for all their further preventive</p>

	<p>measures. This is why further specification on the development and approval of the RS could improve the performance of OEs overall on this task.</p> <p>FI Comments: <b>FI:</b> support the COM proposal option 1.</p> <p>LV Comments: <b>Option 2.</b></p> <p>EL Comments: <b>Option 2- We need to specify how the risk assessment should be developed and approved in the AMLR</b></p> <p>HU Comments: <b>Hungary supports Option 2, because the requirement to approve a risk assessment shall be determined in AMLR. Additionally, AMLR should not require NCAs to approve all individual risk assessments of OEs.</b></p> <p>CZ Comments: We prefer option 2. Risk assessment should be approved by the board of the obliged entity. However, we see no need for detailed provisions on how the draft risk assessment shall be developed.</p>
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	<p>IT Comments:</p> <p><i>We support Option 2. Indeed, the risk assessment exercise is a fundamental step to develop an adequate understanding of the risks of money laundering and terrorist financing. Therefore, we deem that a clarification in the AMLR on roles and tasks concerning the approving of the document would be preferable.</i></p> <p>DE Comments:</p> <p><b>We prefer option 1, i.e. maintaining the wording of the Commission proposal.</b></p> <p>BG Comments:</p> <p>We prefer Option 2</p> <p>RO Comments:</p> <p><b>We consider that both proposed options are sustainable, but with different recipients, namely option 1 for the non-financial sector and option 2 for the financial sector.</b></p> <p>SK Comments:</p> <p><b>We prefer Option 2.</b></p> <p>LT Comments:</p> <p><b>We prefer Option 2.</b></p> <p>PL Comments:</p> <p>PL prefers option 1.</p>
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	<p>ES Comments:</p> <p>As explained in the answer provided to Q1.2, we do believe that the level of approval for policies should be raised, so as to be approved by the management body or equivalent.</p> <p>Similarly, the overall risk assessment should be approved by the same body that approves the policies, as is the basis for the policies design. This way, it is ensured the involvement and awareness of the management body in the whole process.</p> <p>Additionally, the approval of the overall risk assessment is one of the functions that cannot be outsourced under any circumstances according to art.40 AMLR, meaning that is considered as a strategic one. Therefore, the AMLR should clearly establish the level of approval needed.</p>
<p><b>Q5 Exemption from the risk assessment requirement</b></p>	
<p>Q.5.1 Do Member States wish to remove any possibility of exempting obliged entities to a risk assessment under Article 8(3) of the AMLR (Option 1) or do they wish to maintain an exemption option (Option 2)?</p>	<p>MT Comments:</p> <p>Malta is in favour of <b>option 2</b>, i.e., retaining the exemption from the risk assessment obligation where the specific risks inherent to the sector are clearly identified and understood. Ultimately, it is always the national AML supervisor that should decide whether to exempt obliged entities to a risk assessment or otherwise.</p> <p>NL Comments:</p> <p>As the words "clear and understood" are vague we would steer towards removal of this possibility (option 1).</p>

	<p>BE Comments:</p> <p>As underlined in the Presidency note, the provision providing for a possibility of exemption to carry out the risk assessment foreseen in Article 8(1), coming from the AMLD4, can lead to misinterpretation and lead OEs to avoid performing any risk assessment, which of course cannot be the aim nor the consequence of this provision. Our opinion is that for a risk being “clear and understood”, it has to be assessed, and OEs should be able to document such an assessment they realize. Furthermore, paragraph 1 already specifies that the requirement to carry out a risk assessment has to be applied by OEs proportionally to their nature and size, so that the current text of the proposal already takes into account the specific situation of small entities. Consequently, we support <b>option 1</b> aiming at deleting this possibility of exemption, that we deem unnecessary.</p> <p>SI Comments:</p> <p>SI:</p> <p>We support Option 2, as it allows for a more proportional approach. However, it is absolutely necessary to ensure that the specific risks inherent to certain sectors are clearly identified and understood. In our view the national competent authorities could play a key role by conducting sectoral risk assessments, where feasible, and communicating the results of such a risk assessment to the obliged entities. In this way especially small OEs could benefit from a comprehensive risk assessment conducted at a level of quality which each individual OE would not be able to achieve. This is a question of expertise and resources, which is not in favour of small OEs. In practice, a strong communication link between the conductor of a sectoral risk assessment (NCA) and the obliged entities (which have to build their preventive measures upon the findings of this risk assessment) would be crucial.</p> <p>FI Comments:</p> <p><b>FI:</b> prefer Option 1</p>
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	<p>LV Comments:</p> <p><b>LV is in favor of Option 1. Effective risk management requires an individual ML/TF risk assessment that is appropriate to the activities and size of each entity. If exemption stays included, it should only be allowed on a case-by-case basis.</b></p> <p>EL Comments:</p> <p><b>Option 1- Misinterpretation of these provisions may lead obliged entities to avoid any risk assessment and at the same time makes it difficult to ensure compliance with FATF Recommendation 1 (INR). 1) providing that “<i>competent authorities or SRBs may determine that individual documented risk assessments are not required, if the specific risks inherent to the sector are clearly identified and understood</i>”</b></p> <p>HU Comments:</p> <p><b>Hungary supports Option 1: There is no reason to allow an exemption, as the risk assessment lies at the very base of the current AML/CFT system, and the risk ranking of the OEs may change at any time.</b></p> <p>CZ Comments:</p> <p>We prefer option 2.</p> <p>IT Comments:</p> <p><i>We recognize that the risk assessment exercise plays a key role to develop an adequate understanding of the risks of money laundering and terrorist financing. This is particularly true for the financial sector obliged entities, whose level of complexity makes the risk assessment exercise particularly relevant.</i></p>
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	<p><i>However, in order to be fully aligned with the interpretative note of FATF Recommendation 1 (INR), we would prefer to maintain the current exemption option (Option 2), clarifying the conditions to consider risks as “clearly identified and understood”.</i></p> <p>DE Comments:</p> <p><b>We prefer to maintain the current wording of the COM proposal (option 2).</b></p> <p>BG Comments:</p> <p>We prefer Option 1</p> <p>RO Comments:</p> <p><b>We consider that both proposed options are sustainable, but with different recipients, namely option 2 for the non-financial sector and option 1 for the financial sector.</b></p> <p>SK Comments:</p> <p>We prefer Option 1.</p> <p>LT Comments:</p> <p><b>We prefer Option 1.</b></p> <p>PL Comments:</p> <p>We are in favour of removing any possibility of exempting obliged entities to a risk assessment under Article 8(3) (option 1).</p>
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	<p>ES Comments:</p> <p>Option 1. As stated in Q.4 risk self-assessment is the basis for setting policies and, therefore, procedures, requirements for which there is no exemption. Furthermore, we guess that the proportionality already foreseen would be sufficient to modulate this requirement</p>
<p>Q.5.2 Do Member States want all obliged entities to benefit the exemption from the risk assessment obligation (Option 1) or do they want to reserve it to certain obliged entities to the exemption (Option 2)?</p>	<p>MT Comments:</p> <p>As stated above, given that the discretion lies within the supervisory authority to decide when the individual documented risk assessments are not required in instances where the risks inherent in the sector are clear and understood, Malta agrees with <b>option 1</b>. The fact that such possible exemption is stipulated in the law does not mean that it will be granted to all obliged entities. On the other hand, if the exemption is limited to specific Designated Non-Financial Business and Professions [DNFBPs], then this will exclude other sectors which could present significant low risk in a particular MS.</p> <p>NL Comments:</p> <p>Should the exemption remain within the framework, we would go for option 2.</p> <p>BE Comments:</p> <p>If some Member States really want to see this possibility maintained in the text of the new Regulation, we could live with that as far as it is only open to non-financial institutions, as far as for financial institutions, performing a risk assessment poses less difficulties (so on question 5.2, we support <b>option 2</b>).</p> <p>SI Comments:</p>

	<p>SI: In practice this exemption would be more relevant to OEs from the non-financial sector, but not exclusively as for example currency exchange offices operating within hotels and being low risk could also benefit from such an exemption. We therefore prefer Option 2.</p> <p>FI Comments: <b>FI:</b> prefer Option 2</p> <p>LV Comments: <b>Option 1, but open only to small and low-risk entities and on a case-by-case basis, provided that the sectoral risk assessment ensures the effective operation of the entity's AML / CFT.</b></p> <p>EL Comments: <b>Option 2 - We are not in favour of maintaining the exemption, but if it remains it has to be limited to low risk sectors (at EU level) for which the SNRA shall be clear on the <i>specific risks inherent to the sector</i> in order to ensure <i>they are clearly identified and understood</i> in the same way by all providers (obligated persons) across EU.</b></p> <p>HU Comments: <b>Hungary is opposed to granting an exemption (see at Q5.1). In case such exemption is granted, this should be limited to certain entities (Option 2), based on the complexity and size, and only if the overall risk level so allows.</b></p> <p>CZ Comments:</p>
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	<p>We prefer option 2.</p> <p>IT Comments:</p> <p><i>As stated under Q.5.1, we deem that risk assessment exercise plays a key role – especially for the financial sector obliged entities – to develop an adequate understanding of the risks of money laundering and terrorist financing they are exposed to.</i></p> <p><i>Against this background, with a view of staying aligned to the interpretative note of FATF Recommendation 1 (INR), we would prefer to keep a general exception option (Option 1).</i></p> <p>DE Comments:</p> <p><b>As the supervisor has to make a decision on this, we feel that it can be open to all obliged entities, so prefer to maintain the current wording.</b></p> <p>BG Comments:</p> <p>No preference, but there should not be an exemption for the financial sector</p> <p>RO Comments:</p> <p>Option 2</p> <p>SK Comments:</p> <p>Not relevant – see answer to Q 5.2</p> <p>LT Comments:</p> <p><b>Not applicable.</b></p>
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	<p>PL Comments: Due to the answer to the Q.5.1 question not related.</p> <p>ES Comments: None, as stated in Q.5.1</p>
<p>Q.5.3 Do Member States support Option 1 or Option 2?</p>	<p>MT Comments: Malta favours <b>option 2</b> provided that the exemption is open to all obliged entities. To this effect, Malta proposes the following amendedments (in bold) to the text:</p> <p><i>"3. Member States may provide that supervisors may determine that overall risk assessments are not required for <del>the</del> obliged entities <del>mentioned in article 3, point 3(a), (b) or (d)</del>, if the specific risks inherent to the sector are clearly identified and understood and when the national risk assessment has identified this sector as exposed to a low risk of money laundering and terrorist financing. In such a case, the supervisor shall develop overall risk assessments under the conditions set out in this Article. These assessments shall be binding for those obliged entities."</i></p> <p>NL Comments: We prefer option 1.</p> <p>BE Comments: Regarding the terms of the exemption, we have no strong feeling but we are not really convinced by either of the two options suggested:</p>

	<ul style="list-style-type: none"><li>- for an OE, individually demonstrate to its supervisor its understanding of risks will be as heavy as to develop a risk assessment;</li><li>- on the other hand, shifting the responsibility to the supervisors themselves seems also inappropriate.</li></ul> <p>SI Comments:</p> <p>SI:</p> <p>We believe that both options are far too burdensome for the supervisors as well as for obliged entities.</p> <p>As an alternative we propose that in AMLR an option for exclusion would exist only for sectors for which it was in the NRA assessed that they pose low risk, while the competent authorities may in their guidelines (and based on their supervisory risk assessment) include exemptions for the whole sector or limit it based on the proportionality clause (size, business complexity, number of employees etc.).</p> <p>FI Comments:</p> <p><b>FI:</b> support the Option 2</p> <p>LV Comments:</p> <p><b>Option 1.</b></p> <p>EL Comments:</p> <p><b>Please refer to our answer in Q5.2</b></p>
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	<p>CZ Comments: We prefer option 2.</p> <p>IT Comments: <i>In the light of above, we support Option 1.</i></p> <p>DE Comments: <b>We prefer option 1 which means that an exemption should only be granted on an individual basis. We are fine with adding criteria for a low-risk industry as suggested.</b></p> <p>RO Comments: We consider that both proposed options are sustainable, but with different recipients, namely option 2 for the non-financial sector and option 1 for the financial sector.</p> <p>SK Comments: Not relevant – see answer to Q 5.2</p> <p>LT Comments: <b>Not applicable.</b></p> <p>PL Comments: Due to the answer to the Q.5.1 question not related.</p>
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	ES Comments: N/A
<b>Q6 Clarifications on the content of the risk assessment</b>	
Q.6.1 Do Member States wish to specify the content of the risk assessment (Option 1) or keep the current wording (Option 2)?	<p>MT Comments: Malta favours <b>option 2</b>, i.e., to maintain the current wording at L1 legislation in order to grant greater flexibility to OEs.</p> <p>NL Comments: We are okay with both options, as long as there is room for RTS in which more details can be laid down. This is especially important for smaller OEs.</p> <p>BE Comments: We support the text of Article 8 to be revised in order to see clarified in the level 1 rules the content of the risk assessment (so we support <b>option 1</b>), but we would favor adopting a more 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 the characteristics of the customers, the products, services or transactions offered by the OE, the countries or geographical areas concerned and the distribution channels used by the OE (i.e. elements foreseen in point b) to e) of the Presidency' proposal). On the contrary, we believe that the Presidency' suggestion goes too far by adding other elements not foreseen by the Rec 1 of the FATF. Furthermore, we underline that:</p>

	<ul style="list-style-type: none"> <li>- the “typology of ML/TF threats” (foreseen in point a) of the Presidency’ proposal) is not a concept already used elsewhere in the COM proposal, and would need at least a definition if retained;</li> <li>- elements foreseen in points f) and g) are more elements that an OE has to integrate in its internal procedures rather than in its risk assessment;</li> <li>- finally the terms “signs of suspicions” seems to us to be unclear and could lead to misunderstanding.</li> </ul> <p>→ <u>Drafting suggestions:</u></p> <p><u>Article 8</u></p> <table border="1" data-bbox="824 671 1991 1409"> <tr> <td data-bbox="824 671 1406 1179"> <p>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:</p> </td> <td data-bbox="1406 671 1991 1179"> <p>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, <b><u>considering the characteristics of their customers, the products, services or transactions offered by them, the countries or geographical areas concerned and the distribution channels used by them, and</u></b> taking into account:</p> </td> </tr> <tr> <td data-bbox="824 1179 1406 1275"> <p>(a) the risk variables set out in Annex I and the risk factors set out in Annexes II and III;</p> </td> <td data-bbox="1406 1179 1991 1275"> <p>(a) the risk variables set out in Annex I and the risk factors set out in Annexes II and III;</p> </td> </tr> <tr> <td data-bbox="824 1275 1406 1409"> <p>(b) the findings of the supra-national risk assessment drawn up by the Commission pursuant to Article 7 of Directive <i>[please insert reference –</i></p> </td> <td data-bbox="1406 1275 1991 1409"> <p>(b) the findings of the supra-national risk assessment drawn up by the Commission pursuant to Article 7 of Directive <i>[please insert reference –</i></p> </td> </tr> </table>	<p>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:</p>	<p>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, <b><u>considering the characteristics of their customers, the products, services or transactions offered by them, the countries or geographical areas concerned and the distribution channels used by them, and</u></b> taking into account:</p>	<p>(a) the risk variables set out in Annex I and the risk factors set out in Annexes II and III;</p>	<p>(a) the risk variables set out in Annex I and the risk factors set out in Annexes II and III;</p>	<p>(b) the findings of the supra-national risk assessment drawn up by the Commission pursuant to Article 7 of Directive <i>[please insert reference –</i></p>	<p>(b) the findings of the supra-national risk assessment drawn up by the Commission pursuant to Article 7 of Directive <i>[please insert reference –</i></p>
<p>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:</p>	<p>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, <b><u>considering the characteristics of their customers, the products, services or transactions offered by them, the countries or geographical areas concerned and the distribution channels used by them, and</u></b> taking into account:</p>						
<p>(a) the risk variables set out in Annex I and the risk factors set out in Annexes II and III;</p>	<p>(a) the risk variables set out in Annex I and the risk factors set out in Annexes II and III;</p>						
<p>(b) the findings of the supra-national risk assessment drawn up by the Commission pursuant to Article 7 of Directive <i>[please insert reference –</i></p>	<p>(b) the findings of the supra-national risk assessment drawn up by the Commission pursuant to Article 7 of Directive <i>[please insert reference –</i></p>						

	<p><i>proposal for 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final];</i></p> <p>(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 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final]</i>.</p>	<p><i>proposal for 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final];</i></p> <p>(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 6<sup>th</sup> Anti-Money Laundering Directive - COM/2021/423 final]</i>.</p>
<p>SI Comments:</p> <p>SI: We support Option 1.</p> <p>FI Comments:</p> <p><b>FI:</b> we have no strong feelings regarding Options 1 or 2, but are leaning towards supporting Option 1 We wonder whether the fact that there is no guidance in law on what the risk assessment should contain, would in fact be less burdensome for the OE's.?</p> <p>LV Comments:</p> <p><b>Regarding elements that must be included in the risks assessment, LV would strive for some level of harmonization in the AML Regulation (L 1 legislation). LV support Option 1. On Q 6.1. - a set of minimum content is a good starting point (Option 1). In this case, it is important to ensure that all obliged entities, including in the non-financial sector, can</b></p>		

	<p><b>comply with at least the minimum requirements for assessing their inherent risk, the effectiveness of controls applied, and the residual risk.</b></p> <p>EL Comments:</p> <p><b>We understand the added value of flexibility, provided by the current wording, however we consider that Option 1 – ensures better understanding of the requirement and greater effectiveness of AML-CFT measures</b></p> <p>HU Comments:</p> <p><b>Hungary supports Option 1: to facilitate a uniform approach, AMLR should lay down the essential (minimum) elements of the risk assessment should be laid down in AMLR.</b></p> <p>CZ Comments:</p> <p>We prefer option 1.</p> <p>IT Comments:</p> <p><i>Regarding the content of the risk assessment, we would prefer to keep the current wording (Option 2), in order to guarantee more flexibility for both the supervisors and the obliged entities.</i></p> <p>DE Comments:</p> <p><b>We prefer to keep the current wording and would leave the specifics to the RTS to be issued by AMLA. The mandate for the RTS might also include an element of proportionality, not applying the full set of elements to small and lower-risk entities.</b></p>
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	<p>BG Comments: We prefer Option 1</p> <p>RO Comments: <b>Option 1</b></p> <p>SK Comments: <b>We prefer Option 1.</b></p> <p>LT Comments: <b>We prefer Option 2, to keep current wording.</b></p> <p>PL Comments: We can accept specifying the content of RA (option 1).</p>
<p>Q.6.2 Do Member States support Option 1 or Option 2?</p>	<p>MT Comments: Malta favours <b>option 2</b>. It is noted that the proposed wording under option 1 is still lacking in proper detail required for OEs to be able to conduct comprehensive risk assessments. As to the disadvantage highlighted under option 2 by the PCY, i.e., the potential gap between coming into force of the AMLR and RTSs, MSs may wish to consider having a ‘sunset clause’ whereby up until RTSs are issued by AMLA and come into force, national regimes, including L2 regimes, shall remain applicable and in force. This suggestion may also be considered not just for this particular question but also for other areas where RTSs would need to be developed by AMLA, such as those related to CDD.</p>

	<p>NL Comments: See answer to Q6.1, option 2, specifications in RTS.</p> <p>SI Comments: SI: We support Option 2 to include specification of the risk assessment in L2 or even L3 regulation in order to embrace the appropriate level of proportionality</p> <p>FI Comments: <b>FI: we are leaning towards a reference in Level 1 to be the most efficient rather than have an RTS for this. But we can be flexible if the majority insists on a RTS (option 1. but can be 2.).</b></p> <p>LV Comments: <b>Option 2.</b></p> <p>EL Comments: <b>Option 2 – RTS would allow for a more flexible and sector specific content, provided by the most competent AMLA</b></p> <p>HU Comments: <b>Hungary prefers Option 2: based on the essential elements as defined in AMLR, a more flexible, yet practical approach would be to have AMLA prepare an RTS regarding the further details. This would allow NCAs to have more in-depth input.</b></p>
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	<p>CZ Comments: We prefer option 1.</p> <p>IT Comments: <i>We deem that the detailed contents of the risk assessment would be better allocated at L2 level (in particular, a RTS – Option 2).</i></p> <p>BG Comments: We support Option 1, but the RTS in Option 2 could be used to build upon Option 1 and provide more detail.</p> <p>RO Comments: <b>Option 1</b></p> <p>SK Comments: <b>We prefer Option 1.</b></p> <p>LT Comments: <b>Not applicable.</b></p> <p>PL Comments: PL supports option 2.</p>
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	<p>ES Comments:</p> <p>We are in favour of a mixed option of L1 and L2 framework.</p> <p>Notwithstanding, if some level of detail is to be kept at L1, the presidency’s proposal should be complemented with references to the 1) assessment of controls, 2) the final conclusion on inherent risk, residual risk and risk profile associated with the type of obliged entity or group...</p> <p>In addition, the L2 should also specify how to perform the risk self-assessment at group level, as a potential obligation of the group parent to be included in art.13.</p>
<p><b>Article 9 - Compliance functions</b></p> <p><b>Q7 Relationship between compliance manager, compliance officer and senior management</b></p>	<p>ES Comments:</p> <p>Spanish legal framework establishes the obligation for obliged entities to have specific AML/CFT internal control bodies. The type of the internal control bodies depends on the type, size and business volume of the obliged subject: the <u>Internal Control body</u> (mandatory, except for DNFBPS with annual turnover under 2 M € and less of 15 employees), the <u>Technical Unit for Information Processing and Analysis</u> (for obliged subjects whose annual turnover exceeds 50 M €) and the <u>AML Representative</u> (this is mandatory for every single obliged entity). The Internal Control body (mandatory for most obliged entities) does not fit into article 9 of the draft AMLR.</p> <p>Therefore, we propose to add a new paragraph in article 9 providing for the creation of an Internal Control Body. This body would be chaired by the compliance manager and made up of first- and second-line representatives, including the AML compliance officer. Internal Audit may attend with voice but no vote. It has to be taken into account the proportionality principle.</p> <p>In addition, we would propose in this Article 9 to clarify the concept of “executive” as regards their status in the management body of an obliged entity to be appointed as “Compliance manager”.</p>

<p>Q7.1 Do Member States prefer Option 1 or Option 2?</p>	<p>MT Comments:</p> <p>Malta favours <b>option 2</b> in order to ensure that an understanding at the EU level of what is meant by these terms is attained. This will ensure a uniform and common interpretation on the basis of the list of definitions in article 2, keeping in mind the diversity of OEs.</p> <p>NL Comments:</p> <p>Option 2, provided that smaller and non-financial OEs are taken into account. Some flexibility will need to be maintained.</p> <p>BE Comments:</p> <p>We prefer <b>option 2</b>, consisting in seeing the different types of management bodies clarified by additional definitions. In the absence of a harmonized EU framework with respect to corporate law, the various functions in the governance of legal entities may indeed differ between MS, and this should be solved in the AML Regulation in order to be sure these concepts, and above all the compliance functions, which are key concepts, are well understood and implemented in a harmonized way through EU. We fully support also the Presidency’ suggestion, which takes inspiration from the Capital Requirement Directive, to define the concepts of “management body”, “management body in its supervisory function”, and “management body in its management function”. This has the advantage of introducing clarity and coherence, while preserving at the same time flexibility in implementation. To preserve the latter, it could be clarified in a recital that the Regulation should apply to all management body structures irrespective of the allocation of competences in accordance with national company law.</p> <p>SI Comments:</p>
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	<p>SI: Between both options, we prefer Option 2, however we see the need to adequately explain the provisions in terms of non-financial obliged entities. If a majority of MSs would opt for Option 1, we would not oppose.</p> <p>FI Comments: <b>FI:</b> can support Option 2, as it resembles the financial sector regulation</p> <p>LV Comments: <b>LV is in favor of Option 1 taking into account different possible modalities.</b></p> <p>EL Comments: <b>Option 2 – the three functions and their duties shall be further clarified to ensure consistent and effective implementation</b></p> <p>HU Comments: <b>Hungary supports Option 2, because it would be necessary list of definitions to introduce definitions of the management body inspired by European financial sector regulations (for example: management body, management body in its management function, management body in its supervisory function) in Article 2 of AMLR.</b></p> <p>CZ Comments: We prefer option 1.</p>
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	<p>IT Comments:</p> <p><i>We stand for Option 1 because this ensures more flexibility in the application of the AML rules, especially when sectoral rules already apply. In our view the organizational framework for AML internal control system should be designed as follows (similarly to what it is provided in the banking prudential framework):</i></p> <p><i>i) the <b>board</b> should be responsible for ensuring that the obliged entity complies with its AML/CFT obligations and for approving the general ML-TF risk exposure and AML/CFT policy;</i></p> <p><i>ii) the <b>compliance manager</b> should be a member of the board who does not perform any executive function and has appropriate knowledge, skills and expertise to ensure the overall functionality of the AML-CTF control framework as well as to monitor the ML/TF risk exposure of the obliged entity.</i></p> <p><i>ii) the <b>compliance officer</b> should ensure the proper function of the second-line of defence and should be in charge of the implementation of AML-CFT and reporting of suspicious transactions to the FIU.</i></p> <p><i>Having said that, we have concerns on the definition of “senior management” included in the Commission’s proposal of AMLR (Art. 2 no. 28) and also mentioned in the background information of the Presidency note on internal controls (pag. 14), since this definition is not clear and may introduce elements of confusion in the framework (“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 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”).</i></p> <p><i>In our view, any possible inconsistency with the definition of “senior management” provided for in the financial sectoral rules (e.g. CRD V and VI under negotiations, and MiFID II) should be avoided. Moreover, we do not understand the reasons why there is a need to specify “in addition to executive members of the board of directors or, if there is no board, of its equivalent governing body” in the new definition of “senior management” provided in the AMLR proposal. Indeed, we understand that no material changes have occurred in the tasks and responsibilities of “senior management” in the new proposal, compared to the current AMLD framework. Therefore, in our view we see no reason to amend the definition of “senior management” in</i></p>
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	<p><i>force and suggest deleting the reference to “in addition to executive members of the board of directors or, if there is no board, of its equivalent governing body”. This would also ensure full consistency with the definitions of “senior management” provided in CRD and MiFID II frameworks. On this, please also refer to our answer to the next question (Q. 7.2).</i></p> <p>DE Comments: <b>For clarification purposes, we support to add definitions if possible.</b></p> <p>BG Comments: We prefer Option 2</p> <p>RO Comments: <b>we consider that both proposed options are sustainable, but with different recipients, namely option 1 for the non-financial sector and option 2 for the financial sector.</b></p> <p>SK Comments: <b>We prefer Option 2.</b></p> <p>LT Comments: <b>We prefer Option 2.</b></p> <p>PL Comments: PL prefers option 1.</p>
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	<p>ES Comments:</p> <p>Option 2</p>
<p>Q7.2 Do Member States prefer Option 1 or Option 2?</p>	<p>MT Comments:</p> <p>Malta does not particularly see the relevance of the question, as the CION’s proposal provides for a bipartite model in relation to AML/CFT controls i.e., the compliance manager exercises oversight, and the compliance officer is responsible for day-to-day operations.</p> <p>Additionally, Malta’s understanding is that ‘senior management’ does not refer to one single employee but rather to a number of employees or officers within an obliged entity satisfying the criteria prescribed for senior management under Article 2(28) of the AMLR. By way of an example, in a bank, this definition of senior management can be occupied by a branch manager which to our mind would have the required understanding of ML/FT risks and sufficient knowledge of how for example particular products or services offered by the bank can be abused for ML/FT purposes and hence should be able to take the required decisions, such as approving certain business relationships and onboarding certain customers such as PEPs.</p> <p>Malta welcomes the distinction in the tasks provided for under Option 1, however we are of the opinion that the compliance officer should not be tasked with approving or not business relationships as this should be the responsibility of the first line of defence. Otherwise, this would lead to a situation where the compliance officer would eventually have to check and assess his/her own work.</p> <p>NL Comments:</p> <p>In principle option 2 but if required from a proportionality point of view option 1 should be made</p>

	<p>possible for smaller OEs. Option 2 is good for large OEs: Compliance Manager → Head of Compliance → AML/CFT Compliance Officer. And of course an audit function. But for smaller OEs option 2 can be too much and two layers will be enough (option 1). Proportionality is needed here.</p> <p>In a tripartite model the AML/CFT compliance manager should have a ultimate possibility to escalate directly to the compliance manager.</p> <p>BE Comments:</p> <p>As regard the links between the different functions identified, we fully support <b>option 1</b> which foresees a bipartite organization, as the tripartite model seems too complex for being applied sufficiently broadly by all OEs and, even in complex OEs as financial institutions for example, would dilute skills and responsibilities, that could lead to inefficiencies.</p> <p>Moreover, contrary to what is stated in the Presidency note, we do consider the Commission proposal to already imply a bipartite organization of the AML function, with relevant tasks being attributed to the ‘compliance manager’ and the ‘compliance officer’. In our reading, in line with the current text of AMLD4, these do not include the operational tasks attributed to the ‘senior management’ - for which indeed a functional definition applies -, such as notably approving business relationships involving transactions with high-risk third countries, PEPs or respondent institutions. According to the “3 lines of defences” model applicable to financial institutions, the ‘compliance officer’ (2<sup>nd</sup> line) should be responsible for ensuring that all staff in direct contact with customers and transactions (1<sup>st</sup> line) effectively implement the AML/CFT internal policies and procedures that are applicable in the framework of their functions. We thus do agree that the ‘compliance officer’, being part of the 2<sup>nd</sup> line of defence, must be different from the persons</p>
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	<p>exercising such operational functions, although we do not agree that the handling of alerts would be an operational function, as the Presidency note seems to suggest (cf. also operational tasks attributed to the compliance function in the context of e.g. GDPR).</p> <p>Beside of this and to avoid any confusion with prudential requirements applicable to financial institutions, we would name the “compliance officer” referred to in the proposal more precisely as the “<i>AML/CFT compliance officer</i>” (which does not prevent that depending the organization within financial institutions and for reasons of proportionality, the compliance officer designated pursuant prudential requirements and the “AML/CFT compliance officer” referred to in the AML Regulation are the same person – see Q10.2 below).</p> <p>SI Comments:</p> <p>SI: We prefer Option 1.</p> <p>FI Comments:</p> <p><b>FI:</b> prefers Option 1 the bipartite model, as it is more efficient</p> <p>LV Comments:</p> <p><b>Option 2 - to maintain a three staged model.</b></p> <p>EL Comments:</p>
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	<p><b>Option 1- although 2<sup>nd</sup> option is reasonable, it is going to be very challenging for smaller entities to apply</b></p> <p>CZ Comments: We prefer option 1.</p> <p>IT Comments: <i>As a preliminary remark, we would like to underline that – as clarified at the Working party held last 7-8 March – the Commission’s proposal is already based on a bipartite organization, with no room for a tripartite model. Indeed the tasks attributed to the “senior management” (e.g., the approval for the on boarding of high-risk customers) cannot be considered as tools related to the internal control framework. Such measures belong instead to the CDD measures toolbox which are normally performed by managers fully integrated in the business lines. Against this background, we support Option 1 even tough, for the reasons clarified above, we firmly oppose to the idea of entrusting the compliance officer with the above mentioned tasks (e.g. approving business relationships involving transactions with high-risk third countries, PEPs or respondent institutions). We also take this opportunity to submit to your consideration the following issues, partially mentioned in our answer to question 7.1. <b>First, it is of the utmost importance for us that the provisions on the setting of compliance functions are consistent with the sectoral rules applicable to financial obliged entities;</b> yet, we believe that Option 1 fully achieves both these objectives. With regard to the organization of the compliance functions, please see answer Q7.1 with regard to the division of tasks between the board, the compliance manager and the compliance officer. <b>Second, the definition of “senior management” should be designed in a way that avoids possible inconsistencies with the definitions included in the sectoral rules (CRD, MiFID II) also applicable to financial obliged entities.</b></i></p>
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	<p>DE Comments:</p> <p><b>At this stage, we do not see the added value of establishing a tripartite structure and would rather prefer to keep things simple.</b></p> <p>BG Comments:</p> <p>We prefer Option 1</p> <p>SK Comments:</p> <p><b>We prefer Option 1.</b></p> <p>LT Comments:</p> <p><b>We prefer Option 1.</b></p> <p>PL Comments:</p> <p>PL prefers option 1.</p> <p>ES Comments:</p> <p>Option 1</p>
<p><b>Q8 Resources assigned to compliance functions</b></p>	
<p>Q.8.1 Do Member States support Option 1 or Option 2?</p>	<p>MT Comments:</p>

	<p>While Malta agrees with <b>option 2</b> in relation to the proposed text, we do not see how such amendments actually address the issue regarding when the compliance officer is removed from his/her office by the senior management. We are of the view that additional text should also include safeguards that the senior management shall inform the management body of its intention to remove the compliance officer from his/her position with the former being tasked with approving or not such line of action.</p> <p>NL Comments: Option 1.</p> <p>BE Comments: We see merit in <b>option 2</b>, which allows the “AML/CFT compliance officer” to “bypass” the Compliance Officer designated pursuant prudential requirements and the senior manager if necessary. But for this to be efficient, the “AML/CFT compliance officer” should have access to both the management committee <u>and</u> to the board of directors, not just the latter.</p> <p>SI Comments: SI: We can support Option 2.</p> <p>FI Comments: <b>FI:</b> prefer Option 2 (i.e. strong position)</p>
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	<p>LV Comments:</p> <p><b>Option 2.</b></p> <p>EL Comments:</p> <p><b>Option 2</b></p> <p>HU Comments:</p> <p><b>Hungary supports Option 2 (enhanced protection of the compliance officer). CO should have the powers as under Option 1, and additionally the power to inform the management body in its supervisory function when the compliance officer and/or head of the compliance function are removed from office.</b></p> <p>CZ Comments:</p> <p>We support option 2.</p> <p>IT Comments:</p> <p><i>We strongly support Option 2 because we believe that the compliance officer should have not only access to any documentation/information/staff of the obliged entity, but should also have direct access to the management body and be removed (as well as appointed) by the management body itself, in order to be in a position to fulfil the AML tasks and responsibilities independently, efficiently and effectively.</i></p> <p><i>This would also ensure full consistency with sectoral rules applicable to financial obliged entities.</i></p> <p>DE Comments:</p>
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	<p><b>We support option 2.</b></p> <p>RO Comments: Option 2</p> <p>SK Comments: We prefer Option 1.</p> <p>LT Comments: <b>We prefer Option 2.</b></p> <p>PL Comments: PL was not in favour of regulating issues regarding internal position of compliance officer. We are of the opinion that all obligations are imposed on OEs and it is in their best interest to ensure that internal position and competences of compliance officer are adequately addressed. Therefore if we have to choose between tableted options we support option 1.</p> <p>ES Comments: Option 2</p>
<p>Q.8.2 If they wish to increase the protection of compliance officers in the performance of their duties, can Member States clarify, on the basis of their national experience, which types of protections</p>	<p>MT Comments: Malta notes that article 11(3) of the proposed AMLR requires obliged entities to have in place appropriate procedures for all their employees, which would also include the compliance</p>

<p>they would like to add to Article 9 (4) of the AMLR?</p>	<p>officer, when reporting breaches of this regulation internally, to be protected against retaliation, discrimination, and any other unfair treatment.</p> <p>On the other hand, article 43(3) of the proposed 6AMLD poses a requirement on the MSs to ensure that where employees or representatives report potential or actual breaches of AML/CFT requirements, these should be protected from retaliation, discrimination, and any other unfair treatment.</p> <p>Having said that, this seems to fall short of what is currently provided for under article 38 of the revised 4<sup>th</sup> AMLD which extends such safeguards and protection to employees and representatives reporting either internally or to the FIU any suspicion of ML/FT. In our view, the proposed articles 43(3) of the AMLD6 and 11(3) of the AMLR should therefore, be extended to also cover situations as referred to in the current article 38 of the revised 4<sup>th</sup> AMLD.</p> <p>An additional protection under the Maltese regime is that whenever the MLRO (compliance officer) departs from his/her position (i.e., both when resigning or otherwise removed from office), that MLRO shall inform the AML supervisor as to whether his/her departure is linked to the implementation of the obliged entities' AML/CFT obligations (FIAU Implementing Procedure Part I, Section 5.1.3, p. 212).</p> <p>NL Comments: N/A.</p> <p>BE Comments: See Q.8.1</p>
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	<p>SI Comments:</p> <p>SI:</p> <p>On ground of our national experience, we propose to include the following or similar wording with the aim to set a clear obligation on obliged entities to ensure coherent and comprehensive internal communication and support in relation to AML/CFT tasks:</p> <p><b>Internal organizational units of the obliged entity, including the management or any other managing body of the obliged entity, must provide assistance and support to the compliance officer and compliance manager in performing their tasks under this Act, and keep them informed of all facts that are or could be related to money laundering or terrorist financing. The obliged entity shall regulate the manner of cooperation between its organizational units and the compliance officer and compliance manager in more detail with an internal act.</b></p> <p>LV Comments:</p> <ul style="list-style-type: none"><li>- <b>The compliance officer or the head of AML function shall have unrestricted access to the governing body to address risks and issues identified through independent risk management activities.</b></li><li>- <b>The governing body approves all decisions regarding the appointment or removal of the compliance officer or the head of AML function and approves the annual compensation and salary adjustment of the compliance officer.</b></li><li>- <b>No front-line unit executive oversees any independent compliance or AML risk management unit.</b></li></ul> <p>EL Comments:</p> <p><b>The MLRO should</b></p>
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	<ul style="list-style-type: none"><li>• <b>hold a position of sufficient seniority within their firm (at least a director-level employee) so that they can access the files and information they need to carry out their anti-money laundering duties and a position that allow them to design, implement, and enforce their firm's compliance systems and procedures,</b></li><li>• <b>have direct reporting line to the BoD</b></li><li>• <b>submit STRs directly to FIU, independent from senior management,</b></li></ul> <p><b>Another measure could be that the AMLRO removal shall be based on a reasoned and documented decision of the BoD</b></p> <p>HU Comments:</p> <p><b>Hungary proposes further elaboration in AMLR on the roles and responsibilities of the compliance officer and the compliance manager as follows:</b></p> <ul style="list-style-type: none"><li>✓ <b>granting the compliance officer power to access any relevant information held by the obliged entity;</b></li><li>✓ <b>defining strict conditions under which the employment contract of a compliance officer may be terminated;</b></li><li>✓ <b>the rights of a compliance manager/officer to take AML/CFT related decisions as defined in the AMLD shouldn't be harmed or unduly influenced (e.g. by the interests or decisions of the core business areas);</b></li><li>✓ <b>de minimis fit and proper criteria regarding relevant AML/CFT education and expertise to fill in the position and perform the activity of a compliance manager/officer;</b></li><li>✓ <b>rights, powers, and duties of the compliance manager (e.g. management approval for customer relationships and terminating business relationships when it is deemed necessary);</b></li><li>✓ <b>protection of the rights of the compliance manager/officer;</b></li></ul> <p><b>if the compliance officer function is outsourced, all necessary information should be provided for the person understanding the risks, risk appetite and AML functions,</b></p>
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	<p><b>activities, controls of the entity to be able to make decisions and to assess the need for filing an STR (understanding and assessing unusualness).</b></p> <p>CZ Comments:</p> <p>We support the idea of increasing the protection of compliance officers, however we are not able at this moment to provide any specific suggestions in this regard. This task is difficult also given the different nature of obliged entities. Maybe AMLA RTS could be the solution.</p> <p>IT Comments:</p> <p><i>Please find below a proposal for «requirements» aimed at ensuring the effectiveness and efficiency of the AML 2-level compliance function and the head of this function (i.e. the compliance officer).</i></p> <p><b>Requirements for the AML 2-level compliance function:</b></p> <ul style="list-style-type: none"> <li>i) <i>independency from operational units that it controls ;</i></li> <li>ii) <i>separation from operational units;</i></li> <li>iii) <i>segregation of 2nd- and 3rd level controls, where in line with the proportionality principle;</i></li> <li>iv) <i>adequate level of authority and hierarchy;</i></li> <li>v) <i>appropriate resources and staffing with adequate competences;</i></li> <li>vi) <i>access to data, documents and staff;</i></li> <li>vii) <i>periodic planning and reports to governing bodies</i></li> </ul> <p><b>Requirement for the head of AML compliance function (i.e. the compliance officer):</b></p> <ul style="list-style-type: none"> <li>i) <i>independent of business lines and units that he/she controls;</i></li> <li>ii) <i>adequate authority, hierarchy, seniority;</i></li> <li>iii) <i>appropriate competences;</i></li> <li>iv) <i>accountable to compliance manager and governing bodies;</i></li> <li>v) <i>direct reporting and access to compliance manager and gov. bodies;</i></li> </ul>
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	<p>vi) <i>official process for his/her appointment / removal (approval by management body, reasoned and notified to CA).</i>  <i>This would also ensure full consistency with sectoral rules applicable to financial obliged entities.</i></p> <p>DE Comments:  <b>Based on the rules in our law, we think it should be stated that the compliance officer should face no disadvantage in his employment due to his function. In addition, the compliance officer should generally be protected from termination of the employment during the time the person holds that function and for one year after the function ended (termination for serious misbehaviour should still be allowed).</b></p> <p>SK Comments:  <b>Not relevant – see answer to Q 8.1</b></p> <p>PL Comments:          Due to the answer to the Q.8.1 question not related.</p>
<p><b>Q9 Annual report on the implementation of internal policies, procedures and controls</b></p>	
<p>Q.9 Do Member States wish to maintain the current wording of Article 9(5) of the AMLR (Option 1) or do they wish to</p>	<p>MT Comments:          Malta favours <b>option 2</b>. Our understanding of such an option is that the governing body shall always be the board of directors, or when there is no board of directors, an equivalent</p>

<p>specify the conditions for submitting and processing the annual report (Option 2)?</p>	<p>governing body. As a result, Malta is of the view that the annual report should always be provided to the governing body as previously interpreted, being the highest organ within the entity. To this effect, Malta supports a comprehensive clarification of what is meant by the term ‘governing body’.</p> <p>NL Comments: Option 2.</p> <p>BE Comments: We consider that it should be the responsibility <u>of the AML/CFT compliance officer</u>, rather than of the compliance manager, to make an annual (or more frequent) report, to the governing body of the OE, <u>including to the compliance manager</u>, which is a member of this body.</p> <p>SI Comments: SI: We would support Option 2 for the sake of more legal clarity but would not oppose to Option 1.</p> <p>FI Comments: <b>FI:</b> prefer Option 2</p> <p>LV Comments: <b>Option 1.</b></p>
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	<p>EL Comments:</p> <p><b>Option 2 – for the sake of clarity and consistent application across sectors and EU</b></p> <p>HU Comments:</p> <p><b>Hungary supports Option 2: the responsibility of the compliance officer should be clarified, and clarifications are also needed on the bodies/persons responsible for receiving the report and implementing corrective measures.</b></p> <p>CZ Comments:</p> <p>We prefer option 1.</p> <p>IT Comments:</p> <p><i>In our view, the report should be drafted and submitted to the management body by the AML compliance officer (who is responsible for implementing AML policies). Against this background, we deem that the report should: i) describe the checks carried out, the results obtained, and the weaknesses observed; ii) propose measures to address any such weaknesses, and iii) be submitted to the management body (or the alternative governing body of the obliged entity), which would examine it, and promote the implementation of the measures proposed, where agreed. Such specifications should be included in a L2 act (i.e. a guideline or a RTS).</i></p> <p>DE Comments:</p> <p><b>We are open to both options but have a preference for option 1.</b></p> <p>BG Comments:</p>
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	<p>This should be aligned also with Q7. No specific preference, but clarification could be provided with regard to the follow up to the proposal and the implementation of corrective measures.</p> <p>RO Comments:</p> <p><b>We support Option 2, in which case the need to separate the regulations of the financial sector from those of the non-financial sector / very small entities becomes even more obvious. We consider, in this regard, the exception provided in art. 9 pt. 6 paragraph 2, where only one person will perform all the compliance functions and will report to themselves about the application of these policies.</b></p> <p>SK Comments:</p> <p><b>We prefer Option 1.</b></p> <p>PL Comments:</p> <p>PL is in favour of maintaining the current wording of Article 9(5) of the AMLR (Option 1).</p> <p>ES Comments:</p> <p>Option 2</p>
<p><b>Q10 Organisation of internal control in respect of certain obliged entities</b></p>	
<p>Q.10.1 Do Member States wish to maintain the current wording of Article 9(3) of the</p>	<p>MT Comments:</p>

<p>AMLR (Option 1) or do they agree with the proposed amendments (Option 2)?</p>	<p>In terms of article 9(3), Malta agrees that this article should be supplemented by the size, nature, or risk of the activities undertaken by that group of entities. As to article 9(6) however, Malta is of the opinion that such article 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.</p> <p>NL Comments: Option 2.</p> <p>BE Comments: We are not opposed by principle to such combination of the AMLCO function in the head of a same person within several entities of the same group (only two, as the proposed text seems to indicate, or more). However, this should be considered :</p> <ul style="list-style-type: none"> <li>- in the light of the fundamental question about the determination wheter branches or other forms of establishments qualify as obliged entities separate from their parent company or not: if branches and other forms of establishment does not qualify as such, the question does not arise for them, but only for subsidiaries;</li> <li>- as being only acceptable in cases where this combination of AMLCO functions can be effectively justified by the obliged entity as being a measure based on the proportionality principel (and, consequently, taking into account, not only the size, but also the nature and the level of ML/TF risks of the OE concerned), as far as the group can justify that this combination of functions will not affect the effective exercise of this function within each of the group's entities concerned, or with the view to ensure a more effective exercise of that function. We will send again drafting suggestions to reflect this.</li> </ul> <p>In any case, an authorisation in all cases and by principle for such combination would not be acceptable to us, and we are of the view that the assessment of the sound application of the</p>
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	<p>proportionality principle as applied by an obliged entity is part of the responsibilities of its supervisor, based on justification provided by the obliged entity.</p> <p>So we clearly favor <b>option 2</b> as regard the rule provided for in Article 9(3), but we suggest, firstly, this rule to be moved to paragraph 6, in order to concentrade in this paragraph 6 all the rules aiming to regulate specific situations, and then, that the rule already provided in paragraph 6 being completed to also reffer to the nature and the risks of the OE, besides of its size.</p> <p>➔ see drafting suggestion under Q10.2.</p> <p>SI Comments:</p> <p>SI: We support Option 2, as it provides for a risk-based-approach, for a higher level of harmonization and legal certainty.</p> <p>FI Comments:</p> <p><b>FI:</b> supports Option 2, as it takes better into account the risk based approach</p> <p>LV Comments:</p> <p><b>Option 2, not only the size but also nature of activities and risk should be taken into account.</b></p> <p>EL Comments:</p> <p><b>Option 2 – It shall be supplemented by conditions which reflect the size, nature and risks of the activities undertaken</b></p>
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	<p>HU Comments:</p> <p><b>Hungary supports Option 2, because it provides better consideration of the risk approach is needed. There are small sized entities with higher risk profile.</b></p> <p>CZ Comments:</p> <p>We prefer option 1.</p> <p>IT Comments:</p> <p><i>In our view the appointment of a group-wide compliance officer might be beneficial also in case of large domestic groups, provided that a robust and sound group wide internal control framework is set up. Indeed, a single group wide officer can facilitate the development of a thorough and comprehensive assessment and management of the ML/FT risks at group level. In light of this, we opt for maintaining the current drafting of the article (as in Option 1), in order to ensure a higher degree of flexibility in the organisation of the obliged entities. With regard to cross border groups, instead, considering that the compliance officer is also entrusted with the task of reporting STRs (according to the AMLR), the appointment of the same individual as a compliance officer of a cross-border group could potentially hamper the effectiveness of the STR process.</i></p> <p>DE Comments:</p> <p><b>We support option 1.</b></p> <p>BG Comments:</p> <p>We prefer Option 2. However, there should also be criteria specifying in which cases a person can be an AML compliance officer in more than one entity within a group.</p>
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	<p>RO Comments: <b>Option 2</b></p> <p>SK Comments: <b>We prefer Option 2.</b></p> <p>LT Comments: <b>We prefer Option 1.</b></p> <p>PL Comments: PL prefers current wording of Article 9(3) of the AMLR (Option 1).</p> <p>ES Comments: Option 2, but not only based on size, also on ML/TF risks and nature and complexity of the business</p>
<p>Q.10.2 Do Member States wish to maintain the current wording of Article 9(6) of the AMLR (Option 1) or do they agree with the proposed amendments (Option 2)?</p>	<p>MT Comments: Malta agrees with <b>option 1</b>, however we propose the following amendments (in bold) to the proposed text of the PCY:</p> <p><i>"Obligated entity subject to prudential rules requiring the appointment of a compliance officer or an <del>head of the</del> internal audit function may <del>shall</del> entrust those persons with the functions and responsibilities as referred to in paragraph 3, first sub-paragraph [of article 9] and in Article</i></p>

	<p><i>7, paragraph 2, point b, 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.”</i></p> <p>NL Comments: Option 1.</p> <p>BE Comments: We believe that the importance and the specificity of the mission of the “AMLC/CFT compliance officer” deserves specialization, so we would exclude option 2 and favor <b>option 1</b>, but on the condition that the combination is only possible as measure of proportionality, when a financial institution is not of a size allowing the appointment of two different people. As regard the audit function, the UE Commission confirmed during the WP of 08.03.22 that Article 7(2)c) does not require an “AML/CFT audit function” separate from the general audit function.  → Drafting suggestion for Q.10.1 and 10.2: <u>Article 9(6):</u></p> <table border="1" data-bbox="822 1110 1995 1436"> <tr> <td data-bbox="822 1110 1406 1345">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.</td> <td data-bbox="1406 1110 1995 1345">6. Where <b>this can be justified considering the size, nature and risks of the obliged entity</b> <del>the size of the obliged entity justifies it</del>, the functions referred to in paragraphs 1 and 3 may be performed by the same natural person.</td> </tr> <tr> <td data-bbox="822 1345 1406 1436"></td> <td data-bbox="1406 1345 1995 1436"><b><u>Where it can be justified considering the size, nature and risks of an obliged entity subject to</u></b></td> </tr> </table>	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 <b>this can be justified considering the size, nature and risks of the obliged entity</b> <del>the size of the obliged entity justifies it</del> , the functions referred to in paragraphs 1 and 3 may be performed by the same natural person.		<b><u>Where it can be justified considering the size, nature and risks of an obliged entity subject to</u></b>
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 <b>this can be justified considering the size, nature and risks of the obliged entity</b> <del>the size of the obliged entity justifies it</del> , the functions referred to in paragraphs 1 and 3 may be performed by the same natural person.				
	<b><u>Where it can be justified considering the size, nature and risks of an obliged entity subject to</u></b>				

	<p><b><u>prudential rules requiring the appointment of a compliance officer, this person may be entrusted with the functions and responsibilities of the AML/CFT compliance officer as referred to in paragraph 3, first sub-paragraph.</u></b></p>	
	<p><b><u>Where this can be justified considering the size, nature and risks of an obliged entity that is part of a group, this entity may appoint as its AML/CFT compliance officer an individual who performs the same function in one or several other entities belonging to the same group, as far as the group can justify that this combination of functions will not affect the effective exercise of this function within each of the group's entities concerned. This may also when a group can justify that such combination of functions within two or several of its entities is in favor of the effective exercise of this function within each of that group's entities concerned.</u></b></p>	
	<p>SI Comments:</p> <p>SI:</p> <p>In general, we would support Option 1, however we wonder whether such a proposal is at all in line with prudential legislation, i.e., whether the head of the compliance department could also</p>	

	<p>be appointed as compliance officer: We would welcome an opinion by the Council Legal Service or COM.</p> <p>FI Comments: <b>FI:</b> supports Option 1</p> <p>LV Comments: <b>Option 1, it should be possible to arrange various compliance function to one person but it should not be an obligation.</b></p> <p>EL Comments: <b>We agree with the proposed amendments (Option 2)</b></p> <p>HU Comments: <b>Hungary supports Option 1.</b></p> <p>CZ Comments: We prefer option 1.</p> <p>IT Comments: <i>We are in favour of Option 1 since it ensures more flexibility by permitting the aggregation of the responsibilities of compliance functions in the field of AML-CFT and prudential supervision, according to proportionality (e.g. taking into account the size and complexity of obliged entities); also, Option 1 grants obliged entities the autonomy to choose the organisational structure that better fits their needs and business model.</i></p>
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	<p>DE Comments: <b>We support option 1.</b></p> <p>BG Comments: We prefer Option 1</p> <p>RO Comments: <b>Option 2</b></p> <p>SK Comments: <b>We prefer Option 1.</b></p> <p>LT Comments: <b>We prefer Option 1.</b></p> <p>PL Comments: We are of the opinion that current wording of art. 9(6) does not prohibit assigning the responsibilities of compliance functions in the AML-CFT and prudential areas to the same person, but if our understanding is not correct we are in favour of option 2.</p> <p>ES Comments: Option 2 with “may”</p>
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<b>Article 11 - Integrity of employees</b> <b>Q11 Staff Integrity Assessment</b>	
<p>Q.11.1 Do Member States agree to specify the scope of the persons subject to review by the compliance manager and the date and frequency of such review (Option 2) or do they wish to retain the current wording of Article 11(1) of the AMLR (Option 1)?</p>	<p>MT Comments:</p> <p>Malta agrees with <b>option 2</b>, however it suggests the removal of the word “directly” from the PCY’s proposed text as follows (marked in bold):</p> <p><i>"1. Any employee, or persons in a comparable position, of an obliged entity <b>directly</b> participating in the implementation of the requirements of this Regulation and of Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final], shall undergo an assessment commensurate with the nature of the functions performed and whose content is approved by the compliance officer/head of compliance function of:</i></p> <p style="padding-left: 40px;"><i>(a) individual skills, knowledge and expertise to carry out their functions effectively;</i></p> <p style="padding-left: 40px;"><i>(b) good repute, honesty and integrity.</i></p> <p><i>Such assessment shall be performed prior to taking up of activities by the employee or person in a comparable position, and should be regularly repeated. The intensity of the subsequent assessments shall be determined on the basis of the tasks entrusted <del>to</del> the person and risks associated with them."</i></p> <p>NL Comments:</p> <p>Option 2.</p> <p>BE Comments:</p> <p>We clearly see merit in the Presidency proposal aiming to, on the one hand, limiting the scope of article 11 to the only employees directly participating in the implementation of the AML/CFT</p>

	<p>requirements and, on the other hand, specifying the role of the AML/CFT compliance officer as regard the assessment to be performed. Consequently, we can support the drafting suggestions made in the first sentence of Article 11(1), subject to a slight revision aiming to link the assessment, not to the nature of the functions performed, but “to the risks associated to the tasks performed”, as it seems to be done in the added paragraph.</p> <p>As regard this additional paragraph, we are a bit less 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. So in a nutshell, we would favor <b>an intermediate option, between option 1 and option 2.</b></p> <p>SI Comments:</p> <p>SI: We are in favour of Option 2.</p> <p>FI Comments:</p> <p><b>FI:</b> we are open to consider the new drafting presented under Option 2</p> <p>LV Comments:</p>
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	<p><b>The scope of persons subject to review as already provided in Article 11 emphasizing on the tasks in the field of compliance seems clear enough. At the same time, the frequency of reviews could be clarified as proposed by PRES based on risk associated with the function.</b></p> <p>EL Comments:</p> <p><b>We understand the added value of flexibility, provided by the current wording, however we prefer Option 2.</b></p> <p>HU Comments:</p> <p><b>Hungary supports Option 2. Additionally, further text should be added in case of a person other than an employee: the access of all necessary information and exemption from the prohibition of disclosure of information should be the same regardless of the form of employment/position.</b></p> <p>CZ Comments:</p> <p>We prefer option 1.</p> <p>IT Comments:</p> <p><i>We agree with Option 2, since setting the modalities for the assessment of staff integrity helps increasing convergence and consistency of assessment practices of the staff integrity at the EU level.</i></p> <p>DE Comments:</p> <p><b>We would agree that the current wording of Article 11 para 1 is very broad and should be made more specific. As such, option 2 would be preferable.</b></p>
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	<p>BG Comments:</p> <p>We support Option 2 with the clarification that the compliance officer will be responsible for setting the assessment criteria, but should not perform the assessment himself.</p> <p>RO Comments:</p> <p><b>we consider that both proposed options are sustainable, but with different recipients, namely option 1 for the non-financial sector and option 2 for the financial sector.</b></p> <p>SK Comments:</p> <p><b>We prefer Option 1.</b></p> <p>LT Comments:</p> <p><b>We prefer Option 2, to specify the scope subject to review.</b></p> <p>PL Comments:</p> <p>PL prefers option 1.</p> <p>ES Comments:</p> <p>Option 2 because it is clearer, although it limits the scope (does not cover all employees). Nevertheless, in our opinion, this integrity assessment is not absolutely necessary. It would be enough if Article 11 included the obligation to define and apply adequate policies and procedures to ensure high ethical standards in the hiring of employees, managers and</p>
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	<p>agents, in line with Article 8.4 of the 5AMLD, which states that: “The policies, controls and procedures referred to in paragraph 3 shall include: (a) the development of internal policies, controls and procedures, including (...) employee screening</p>
<p>Q.11.2 Do Member States wish to clarify the scope of persons subject to disclosure of private or commercial links with clients of the obliged entity (Option 2) or do they wish to maintain the current wording (Option 1)?</p>	<p>MT Comments:</p> <p>Malta favours <b>option 2</b>, however while one appreciates the need to avoid any possible conflict of interest that may undermine the effectiveness of an obliged entity’s AML/CFT obligations, 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 party to vet how AML/CFT policies and procedures have been applied.</p> <p>Moreover, Malta 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.</p> <p>NL Comments:</p> <p>Option 2.</p>

	<p>BE Comments:</p> <p>As we already wrote in our previous written comments, 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. So <b>yes</b>, we are in favor of precisising the scope of the provision, but <u>to narrow it</u>, and not to extent it as suggested in the Presidency' note. Consequently, in order for this provision to be more relevant, we suggest limiting its scope to employees belonging to the second line of defense (i.e. AML/CFT compliance function), or persons in a comparable position.</p> <p>SI Comments:</p> <p>SI:</p> <p>We are in favour of Option 2.</p> <p>LV Comments:</p> <p><b>Option 2.</b></p> <p>EL Comments:</p> <p><b>Option 2</b></p> <p>HU Comments:</p> <p><b>Hungary supports Option 2. Similarly to Q11.2, the disclosure should be requested from employees and persons fulfilling the functions via other positions alike.</b></p> <p>CZ Comments:</p>
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	<p>We are open to option 2.</p> <p>IT Comments:</p> <p><i>We stand for Option 2, because for us it is important to clarify the scope of persons affected by the obligation and specify that this requirement should also apply to other persons «in comparable position». However, in our view there may be merit in clarifying further the meaning of « in a comparable position », e.g. by explaining this concept in a recital.</i></p> <p>DE Comments:</p> <p><b>The current wording of the provision seems very broad and lacking clarity. We would therefore prefer a more differentiated provision.</b></p> <p>BG Comments:</p> <p>We prefer Option 2</p> <p>RO Comments:</p> <p><b>Option 2</b></p> <p>SK Comments:</p> <p><b>We prefer Option 2.</b></p> <p>LT Comments:</p> <p><b>We prefer Option 2, to clarify the scope subject to disclosure.</b></p>
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	<p>PL Comments: PL supports option 2.</p> <p>ES Comments: Option 2</p>
<p><b>Q12 Internal reporting of AMLR violations</b></p>	
	<p>DE Comments: <b>We are open to making it an autonomous article and support the suggested wording.</b></p>
<p>Q.12.1 Do Member States wish to make Article 11(3) of the AMLR an autonomous article?</p>	<p>MT Comments: Malta recognises that the contents of Article 11(3) may differ from the heading of Article 11, however Malta has no specific preference as to whether to make Article 11(3) an autonomous article or otherwise.</p> <p>NL Comments: We are flexible on this but we see enough justification for a separate article. However, we will need to take paragraph 4 into account as this relates to the entire article.</p> <p>SI Comments: SI: We support the subject of Art 11(3) to be an autonomous article.</p>

	<p>FI Comments: <b>FI:</b> yes, support a separate article</p> <p>LV Comments: <b>Yes.</b></p> <p>EL Comments: <b>Yes, we agree that this paragraph should be dealt with in an autonomous article</b></p> <p>HU Comments: <b>Hungary supports Option 2.</b></p> <p>CZ Comments: We have neutral position.</p> <p>IT Comments: <i>Yes, absolutely. This matter (e.g. whistleblowing) deserves specific consideration in an autonomous article.</i></p> <p>DE Comments: <b>We are open to making it an autonomous article and support the suggested wording.</b></p>
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	<p>RO Comments: <b>yes</b></p> <p>SK Comments: <b>Yes.</b></p> <p>LT Comments: <b>No preference.</b></p> <p>PL Comments: We do not have strong view in this regard. We can accept art. 11(3) of the AMLR as an autonomous article</p> <p>ES Comments: <b>Yes</b></p>
<p>Q.12.2 Do Member States agree with the proposed amendments to this Article (Option 2) or do they wish to retain the current wording (Option 1)?</p>	<p>MT Comments: Malta favours <b>option 2.</b></p> <p>NL Comments: Option 2.</p> <p>BE Comments:</p>

	<p>We support all the revisions suggested aiming to better frame the requirement of Article 11(3), subject to a slight revision we would like to suggest, aiming to see provided that the breaches can be reported to the AML/CFT compliance officer, <u>as well as to the compliance manager</u> (for the AML/CFT compliance officer itself being able to report something to someone) (= <b>option 2</b>).</p> <p>SI Comments:</p> <p>SI: We support Option 2.</p> <p>FI Comments:</p> <p><b>FI:</b> FI we are open to consider the proposed amendments in option 2. We see the benefit of clarifying how the channel should be organised. (I e option 2). Regarding AML we should prioritize the channel for internal use. However, we see the need to asses this more. How this interacts with the whistle blowing regulation.</p> <p>LV Comments:</p> <p><b>LV is in favor of Option 2 also to ensure clearer distinction from the general whistleblower and their protection regime.</b></p> <p>EL Comments:</p> <p><b>Option 2</b></p>
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	<p>HU Comments: <b>Hungary can accept the Presidency proposal.</b></p> <p>CZ Comments: We prefer option 1.</p> <p>IT Comments: <i>We support Option 2 because in our view the requirements and safeguards of the internal reporting systems for AMLR violations should be specified in the level-1 text. This would ensure consistency of approach with sectoral rules already applicable to financial obliged entities.</i></p> <p>DE Comments: <b>End</b></p> <p>BG Comments: We support Option 2, but compliance officer should report, after confirming the validity of the breach, to the compliance manager.</p> <p>RO Comments: <b>Option 2</b></p> <p>SK Comments: <b>We prefer Option 2.</b></p>
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**Questionnaire following AML working party meeting 7-8.03.2022**

**Deadline: 4 April 2022**

**AMLR internal policies, controls and procedures of obliged entities (WKs 3006/2022)**

17MS : MT NL BE SI FI LV EL HU CZ IT DE BG RO SK LT PL ES (last update: 06/04/2022, 23h29)

	<p>LT Comments: <b>We prefer Option 2.</b></p> <p>PL Comments: We prefer current wording but we can also accept option 2.</p> <p>ES Comments: Ok</p>
<p><b>End</b></p>	<p><b>End</b></p>