

2021/0240 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) 1094/2010, (EU) 1095/2010

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank, (AM201, Marques et al.)

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the European Data Protection Supervisor²,

Acting in accordance with the ordinary legislative procedure,

HAVE ADOPTED THIS REGULATION:

COMP A – establishment, legal status, definitions and seat.

AMs covered: 201, 316,317,318, 319, 320, 321, 325, 327, 328, 329, 330, 332, 333, 334, 335, 336, 344, 345, 346, 347 348, 349, 350, 351, 203, 202, 205, 209, 211, 214, 215, 216, 217, 218

AMs falling: 313, 314, 315, BUDG 19, CONT 21, AFCO 26, 323, 322, 324, 326, CONT 22, AFCO 27, 331, 337, 338, 339, 47, 340, 341, 342, 343, 48

¹ OJ C , , p. .

² [add reference] OJ C , , p. .

CHAPTER I

ESTABLISHMENT, LEGAL STATUS AND DEFINITIONS

Article 1

AM316, 317, 318.

Establishment and scope of action

1. The Authority for Anti-Money Laundering and Countering the Financing of Terrorism ('the Authority') is established as of 1 January 2023.
2. The Authority shall act within the powers conferred by this Regulation, in particular those set out in Article 6, and within the scope of Regulation (EU) 2015/847 of the European Parliament and of the Council³, the Directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU)2015/849 [OP: please insert the next number of COM(2021)423] and the Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [OP: please insert the next number of COM(2021)422], including all directives, regulations and decisions based on those acts, of any further legally binding Union act which confers tasks on the Authority and of national legislation implementing the Anti-Money Laundering Directive [OP: please insert the next number of COM(2021)423] or other Directives conferring tasks on supervisory authorities.
3. The objective of the Authority shall be to protect the public interest, the stability **and integrity** (AM316, Marques et al.) of the Union's financial system and the good functioning of the internal market by:
 - (a) preventing the use of the Union's financial system for the purposes of money laundering and terrorist financing;
 - (b) contributing to identify and assess risks **and threats** (AM318, Chinnici) of money laundering, **especially of the broader and more complex schemes associated with criminal organisations**, (AM317, Schirdewan) and terrorist financing across the internal market, as well as risks and threats originating from outside the Union that are impacting, or have the potential to impact the internal market;
 - (c) ensuring high-quality supervision in the area of anti-money laundering and countering the financing of terrorism ('AML/CFT') across the internal market;
 - (d) contributing to supervisory convergence in the area of anti-money laundering and countering the financing of terrorism across the internal market;

³ Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).

- (e) contributing to the harmonisation of practices in the detection of cross-border suspicious flows of monies or activities by Financial Intelligence Units ('FIUs');
- (f) supporting and coordinating the exchange of information between FIUs and between FIUs and others competent authorities.

The provisions of this Regulation are without prejudice to the powers of the Commission, in particular pursuant to Article 258 TFEU, to ensure compliance with Union law.

Article 2

AM319, 320, 321, 325, 327, 328, 329, 330, 332, 333, 334, 335, 336.

Definitions

1. For the purposes of this Regulation, in addition to the definitions set out in Article 2 of [OP: please insert the reference to Anti-Money Laundering Regulation COM(2021)420] and Article 2 [OP: please insert the reference to 6th Anti-Money Laundering Directive COM(2021)423], the following definitions apply:
 - (1) 'selected obliged entity' means a credit institution, a financial institution, or a group of credit or financial institutions at the highest level of consolidation in the Union, (AM319, Schirdewan; AM320, Castaldo et al.; AM321, Marques et al.), which is under direct supervision by the Authority pursuant to Article 13;
 - (2) 'non-selected obliged entity' means a credit institution, a financial institution, or a group of credit institutions or financial institutions at the highest level of consolidation in the Union, (AM325, Schirdewan; AM327, Marques et al.; AM328, Strugariu et al.), other than a selected obliged entity;
 - (2a) '**obliged entities in the non-financial sector**' means **obliged entities listed in Article 3 [please insert reference to the AMLR], other than credit institution, a financial institutions, or a group of credit institutions or financial institutions at the highest level of consolidation in the Union** (AM329, Marques et al.);
 - (3) 'AML/CFT supervisory system' means the Authority and the supervisory authorities in the Member States;
 - (3a) '**financial supervisor**' means **a supervisor in charge of credit and financial institutions** (AM330, Marques et al.);
 - (4) 'non-financial supervisor' means a supervisor in charge of obliged entities listed in Article 3 of [AMLR], other than credit and financial institutions.
 - (5) 'non-AML/CFT authority' means:
 - (a) a competent authority as defined in Article 4(1), point (40) of Regulation (EU) No 575/2013 of the European Parliament and of the Council

- (b) the European Central Bank when it carries out the tasks conferred on it by Council Regulation (EU) No 1024/2013;
 - (c) a resolution authority designated in accordance with Article 3 of Directive 2014/59/EU of the European Parliament and of the Council;
 - (d) a deposit guarantee schemes ('DGS') designated authority as defined in Article 2(1), point (18) of Directive 2014/49/EU of the European Parliament and of the Council.
- (5a) **'highest level of consolidation in the Union' means the highest level at which a group, including all its subsidiaries and branches within and outside the Union, is consolidated within the Union, as determined in accordance with Part One, Title II, Chapter 2, Section 1 of Regulation (EU) No 575/2013 of the European Parliament and of the Council^{1a}.**

Article 3

Legal Status

1. The Authority shall be a Union body with legal personality.
2. In each Member State, the Authority shall enjoy the most extensive legal capacity accorded to legal persons under national law. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.
3. The Authority shall be represented by its Chair.

Article 4

AM344, 345, 346, 347, 348, 349, 350, 351.

Seat

1. The Authority shall have its seat in [...]

The choice of the location of the seat of the Authority **will be made in accordance with the ordinary legislative procedure, based on the following criteria:**

- (a) it shall not affect the Authority's execution of its tasks and powers, the organisation of its governance structure, the operation of its main organisation, or the main financing of its activities; (AM345, Chinnici; AM346, Urtasun et al.; AM348, Simon et al.; AM349, Eroglu et al.)
- (b) it shall ensure that the Authority is able to recruit the high-qualified and specialised staff it requires to perform the tasks and exercise the powers provided by this Regulation; (AM345, Chinnici; AM346, Urtasun et al.; AM348, Simon et al.; AM349, Eroglu et al.; AM350, Tardino et al.)
- (c) it shall ensure that it can be set up on site upon the entry into force of this Regulation; (AM345, Chinnici; AM346, Urtasun et al.; AM348, Simon et al.; AM349, Eroglu et al.; AM350, Tardino et al.)

- (d) it shall ensure appropriate accessibility of the location, the existence of adequate education facilities for the children of staff members, appropriate access to the labour market, social security and medical care for both children and spouses; (AM345, Chinnici; AM346, Urtasun et al.; AM348, Simon et al.; AM349, Eroglu et al.; AM350, Tardino et al.)
- (da) **it shall ensure a balanced geographical distribution of EU institutions, bodies and agencies across the Union;** (AM344, Chinnici; AM346, Urtasun et al.; AM351, Gualmini et al.)
- (db) **it shall ensure its national AML/CFT framework is of a proven quality and repute, and shall benefit from the experience of national authorities;** (AM345, Chinnici; AM346, Urtasun et al.; AM350, Tardino et al.; AM351, Gualmini et al.)
- (dc) **it shall enable adequate training opportunities for AML/CFT activities;** (AM345, Chinnici; AM346, Urtasun et al.)
- (dd) **it shall enable close cooperation with EU institutions, bodies and agencies;** (AM348, Simon et al.; AM349, Eroglu et al.)
- (de) **it shall ensure sustainability and digital security and connectivity with regards to physical and IT infrastructure and working conditions.** (AM345, Chinnici; AM348, Simon et al.; AM349, Eroglu et al.)

RECITALS

- (1) Experience with the current Anti-Money Laundering and Countering the Financing of Terrorism (AML/CTF) framework, which heavily relies on the national implementation of AML/CFT measures, has disclosed weaknesses not only with regard to the efficient functioning of the AML/CFT framework of the Union but also with regards to integrating international recommendations. Those weaknesses lead to the emergence of new obstacles to the proper functioning of internal market both due to the risks within the internal market as well as external threats facing the internal market.
- (2) Cross-border nature of crime, **especially organised crime**, (AM203, Chinnici) and criminal proceeds endanger Union financial system efforts relating to prevention of money laundering and financing of terrorism. Those efforts have to be tackled at Union level through the creation of an Authority responsible for contributing to the implementation of harmonised rules. In addition, the Authority should pursue a harmonised approach to strengthen the Union's existing AML/CFT preventive framework, and specifically AML supervision and cooperation between FIUs. That approach should reduce divergences in national legislation and supervisory practices and introduce structures that benefit the smooth functioning of the internal market in a determined manner and should, consequently, be based on Article 114 TFEU. **Moreover, it should strengthen the financial system's resilience by tackling ML/TF risks, including those originating from third countries.** (AM202, Benjumea)
- (3) Therefore, a European Authority for anti-money laundering and countering the financing of terrorism, the Anti-Money Laundering Authority ('the Authority') should be established. The creation of this new Authority is crucial to ensure efficient and adequate supervision of obliged entities **that pose a high risk with regards to** (AM205, Benjumea) Money Laundering/Terrorist Financing (ML/TF) risk, strengthening

common supervisory approaches for non-selected obliged entities and facilitating joint analyses and cooperation between Financial Investigation Units (FIUs).

- (4) This new instrument is part of a comprehensive package aiming at strengthening the Union's AML/CFT framework. Together, this instrument, Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive], Regulation [please insert reference – proposal for a recast of Regulation (EU) 2015/847] and Regulation [please insert reference – proposal for the Anti-Money Laundering Regulation] will form the legal framework governing the AML/CFT requirements to be met by obliged entities and underpinning **an EU AML/CFT institutional framework that has been strengthened with a view to tackling internal risks and risks originating from third countries.** (AM209, Benjumea)
- (5) To bring AML/CFT supervision to an efficient and uniform level across the Union, it is necessary to provide the Authority with the following powers: direct supervision of a certain number of selected obliged entities of the financial sector, **including crypto-asset service providers (AM211, Delbos-Corfield et al.);** monitoring, analysis and exchange of information concerning ML/TF risks affecting internal market; coordination and oversight of AML/CFT supervisors of the financial sector; coordination and oversight of AML/CFT supervisors of the non-financial sector, including self-regulatory bodies and the coordination and support of FIUs.
- (6) Combining both direct and indirect supervisory competences over obliged entities, and also functioning as a support and ~~cooperation~~ **coordination (AM214, Tardino et al.)** mechanism for FIUs, is the most appropriate means of bringing about supervision and cooperation between FIUs at Union level. This should be achieved by creating an Authority which should combine independence and a high level of technical expertise and which should be established in line with the Joint Statement and Common Approach of the European Parliament, the Council of the European Union and the European Commission on decentralised agencies⁴.
- (7) **The arrangements concerning the seat of the Authority should be laid down in a headquarters agreement** between the Authority and the host Member State. **The headquarters agreement should** stipulate the conditions of establishment of the seat and the advantages conferred by the Member State on the Authority and its staff. (AM217, Delbos-Corfield et al.) **In line with point 9 of the Common Approach, the Authority should conclude a headquarters agreement with the host Member State in a timely manner before it starts its operational phase. In light of the case-law of the Court of Justice, the choice of the location of the seat should be made in accordance with the ordinary legislative procedure and should comply with the criteria [laid down in this Regulation. (AM215, Tardino et al.; AM216, Ferber et al.; AM217, Delbos-Corfield; AM218, Gualmini et al.);]**

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https://europa.eu/european-union/sites/default/files/docs/body/joint_statement_and_common_approach_2012_en.pdf.

COMP B – tasks and powers

AMs covered: 354, 353, 355, 356, 357, 359, 360, 361, 366, 367, 368, 369, 370, 371, 372, 374, 378, 380, 385, 377, 388, 393, 395, 396, 404, 407, 409, 411, 412, 413, 417, 415, 418, 420, 423, 424, 425, 426, 427, 429, 430, 432, 433, 434, 435, 436, 219, 220, 221

AMs falling: 352, 358, 362, 363, 365, 364, CONT 23, AFCO 28, CONT 24, BUDG 20, 49, CONT 25, CONT 26, 373, AFCO 29, 375, 376, 379, 381, 382, 383, 386, 387, 390, 394, 399, 428, 384, 389, 391, 392, CONT 27, 397, 398, 400, 401, 402, 403, 404, 405, 406, CONT 28, 408, 410, 50, AFCO 30, AFCO 31, AFCO 32, 414, AFCO 33, AFCO 34, AFCO 35, 416, BUDG 21, CONT 29, 419, 421, 422, AFCO 36, AFCO 37, AFCO 38, AFCO 39, 431, AFCO 40, 51, 437,

CHAPTER II

TASKS AND POWERS OF THE AUTHORITY

SECTION 1

TASKS AND POWERS

Article 5

AM353, 354, 355, 356, 359, 360, 361, 366, 367, 368, 369, 370, 371, 372, 374, 377, 378, 380, 384, 385, 388, 389, 391, 393, 394, 395, 396, 398, 407, 409, 411, 412, 413, 415, 417, 418.

Tasks

1. The Authority shall perform the following tasks with respect to money laundering/terrorist financing ('ML/TF') risks facing the internal market:
 - (a) monitor **and respond to** (AM354, Marques et al.) developments across the internal market and assess threats, vulnerabilities and risks in relation to ML/TF, **including cross-border transactions** (AM353, Karas et al.);
 - (b) monitor **and respond to** (AM355, Marques et al.) developments in third countries and assess threats, vulnerabilities and risks in relation to their AML/CFT systems;
 - (ba) **contribute to the drawing up of the lists of high risk third countries referred to in [please add reference to AMLR];** (AM356, Urtasun et al.)
 - (c) collect information **from selected and non-selected obliged entities** (AM357, Strugariu et al.), its own supervisory activities and those of the supervisors and supervisory authorities on weaknesses identified in the application of AML/CFT rules by obliged entities, their risk exposure, the sanctions administered and the remedial actions applied;

- (d) establish a central AML/CFT database of information collected from **selected and non-selected obliged entities** (AM359, Benjumea; AM360, Strugariu et al.), supervisors and supervisory authorities and keep it (AM361, Urtasun et al.) up to date;
 - (e) analyse the information collected in the central database and share these analyses with supervisors and supervisory authorities on a need-to-know and confidential basis;
 - (f) monitor and support the implementation of **targeted financial sanctions**, asset freezes **and confiscations** under the Union restrictive measures across the internal market, **as well as publish information on asset freezes, seizures and confiscations** (AM366, Urtasun et al.; AM367, Strugariu et al.; AM368, Schirdewan; AM369, Castaldo et al.; AM370, Daly; AM371, Marques et al.);
 - (g) support, facilitate and strengthen cooperation and exchange of information between obliged entities and public authorities in order to develop a common understanding of ML/TF risks and threats facing the internal market, **including by participating in public-private partnerships or similar collaborative arrangements** (AM372, Karas et al.);
 - (ga) **issue publications and provide training and other services to obliged entities and non-obliged entities in order to raise awareness of, and address, ML/TF risks and targeted financial sanctions related risks.**
 - (gb) **conduct peer reviews of the fulfilment by the entities in charge of central beneficial ownership registers of the requirements laid down in Chapter II Section 1 of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive];**
 - (h) undertake any other specific tasks set out in this Regulation and in other legislative acts.
2. The Authority shall perform the following tasks with respect to selected obliged entities:
- (a) ensure group-wide compliance with the requirements applicable to the selected obliged entities pursuant to legislative acts referred to in Article 1(2), and any other legally binding Union acts that impose AML/CFT-related obligations on financial institutions, **including on targeted financial sanctions** (AM374, Strugariu et al.);
 - (b) carry out supervisory reviews and assessments on individual entity and group-wide level in order to determine whether the arrangements, strategies, processes and mechanisms put in place by the selected obliged entities are adequate to mitigate their risks related to money laundering and terrorist financing, **as well as to effectively implement targeted financial sanctions**, (AM378, Strugariu et al.) and on the basis of those supervisory reviews impose specific requirements, supervisory measures and administrative pecuniary sanctions pursuant to Articles 20, 21 and 22;
 - (c) participate in group-wide supervision, in particular in colleges of supervisors, including where a selected obliged entity is part of a group that has headquarters, subsidiaries or branches outside the Union;

- (d) develop and maintain up to date a system to assess the risks and vulnerabilities of the selected obliged entities to inform the supervisory activities of the Authority and supervisory authorities, including through the collection of data from these entities. **This collection of data shall be included in the regular reporting of information within the framework of Article 11** (AM380, Benjumea).
3. The Authority shall perform the following tasks with respect to financial supervisors:
- (a) maintain an up-to-date list of financial supervisors within the Union;
 - (b) carry out periodic reviews to ensure that all financial supervisors have adequate resources and powers necessary for the performance of their tasks in the area of **AML/CFT and targeted financial sanctions**;
 - (ba) **request financial supervisors to investigate possible breaches of the requirements applicable to obliged entities** (AM385, Urtasun et al.);
 - (c) perform assessments of the strategies, capacities and resources of financial supervisors in the area of **AML/CFT and targeted financial sanctions**, and make the results of such assessments available to all financial supervisors;
 - (d) facilitate the functioning of the colleges of financial supervisors in the area of **AML/CFT to ensure a sufficient level of coordination between supervisory authorities** (AM377, Urtasun et al.);
 - (e) contribute, **in collaboration with financial supervisors**, (AM389, Fitzgerald) to **the convergence of supervisory practices and promotion of high supervisory standards in the area of AML/CFT and targeted financial sanctions, including the development and implementation, for selected and non-selected obliged entities, of a common AML/CFT reporting methodology that incorporates common regulatory templates** (AM388, Benjumea);
 - (f) coordinate staff and information exchanges among financial supervisors in the Union;
 - (g) provide assistance to financial supervisors, following their specific requests, including the requests **to mediate between financial supervisors** (AM391, Marques et al.; AM393, Urtasun et al.);
 - (ga) **settle disagreements between financial supervisors with binding effect on the measures to be taken by financial supervisors in relation to an obliged entity, including in the context of the AML supervisory colleges, following a request as referred to in point (g)**; (AM395, Marques et al.);
 - (gb) **report to the Commission instances where the absence of effective and efficient supervisory practices and activities derives from an inadequate or lack of transposition of Union law into national law** (AM396, Marques et al.)
4. The Authority shall perform the following tasks with respect to non-financial supervisors:
- (a) maintain an up-to-date list of non-financial supervisors within the Union;
 - (b) coordinate peer reviews of supervisory standards and practices in the area of AML/CFT;

- (c) request non-financial supervisors to investigate possible breaches of requirements applicable to obliged entities and to consider imposing sanctions or remedial actions in respect of such breaches;
- (d) carry out periodic reviews to ensure that all non-financial supervisors have adequate resources and powers necessary for the performance of their tasks in the area of AML/CFT;
- (e) contribute to convergence of supervisory practices and promotion of high supervisory standards in the area of AML/CFT;
- (ea) **facilitate the functioning of colleges of non-financial supervisors in the area of AML/CFT to ensure a sufficient level of coordination between supervisory authorities;** (AM404, Marques et al.)
- (f) provide assistance to non-financial supervisors, following their specific requests, including the requests to settle any disagreements on the measures to be taken in relation to an obliged entity

Where supervision of specific sectors is delegated at national level to self-regulatory bodies ('SRBs'), the Authority shall exercise the tasks set out in the first subparagraph in relation to supervisory authorities overseeing the activity of SRBs.

4a. **The Authority shall perform the following tasks with respect to obliged entities and competent authorities in charge of the preparation, adoption, supervision and enforcement relating to targeted financial sanctions:**

- (a) **ensure outreach and communicate to obliged entities the information provided on the EU measures on targeted financial sanctions, including by managing a consolidated list of persons, groups and entities subject to EU financial sanctions;**
- (b) **act as a central contact point for Member States' competent authorities on the enforcement of targeted financial sanctions, notably for sharing information on designated persons, assets held by designated persons and legal entities controlled by designated persons;**
- (c) **receive information from whistle-blowers with regard to non-implementation or circumvention of targeted financial sanctions;**
- (d) **provide guidelines and assistance in the application of targeted financial sanctions related obligations;**
- (e) **collect statistics on assets frozen by competent authorities relating to persons subject to targeted financial sanctions.** (AM407, Strugariu et al.)

5. The Authority shall perform the following tasks with respect to FIUs and their activities in the Member States:

- (-a) **maintain an up-to-date list of FIUs within the Union;** (AM408, Chinnici et al.)
- (-aa) **monitor changes in FIUs' legal status and framework, tasks, powers and organisation, focusing on resources and powers for the performance of their tasks;** (AM409, Chinnici et al.)
- (a) support and coordinate the work of FIUs and contribute to improved cooperation between FIUs;

- (b) contribute to the identification and the selection of relevant cases for the conduct of joint analyses by FIUs;
 - (c) develop appropriate methods and procedures for the conduct of such joint analyses (AM411, Chinnici);
 - (ca) **issue guidelines and recommendations in cases where it identifies vulnerabilities or deficiencies that are not sufficiently addressed** (AM412, Urtasun et al.);
 - (d) set up, coordinate, organise and facilitate the conduct of joint analyses carried out by FIUs;
 - (da) **provide assistance to FIUs, following their specific requests, including any requests for mediation in case of disagreement** (AM413, Urtasun et al.);
 - (db) **coordinate peer reviews of the fulfilment by FIUs of the requirements laid down in Chapter III of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive]** (AM417, Marques et al.);
 - (e) develop and make available to FIUs IT and artificial intelligence services and tools for secure information sharing, including by hosting FIU.net;
 - (f) develop, share and promote expert knowledge on detection, analysis, and dissemination methods of suspicious transactions;
 - (g) provide specialised training and assistance to FIUs, including through the provision of financial support, within the scope of its objectives and in accordance with the staffing and budgetary resources at its disposal;
 - (h) support **effective compliance by obliged entities and their interaction with FIUs** (AM415, Chinnici) by providing specialised training to obliged entities, including improving their awareness and procedures to detect suspicious activities and financial operations and their reporting to the FIUs;
 - (i) prepare and coordinate threat assessments, strategic analyses of money laundering and terrorism financing threats, risks and methods identified by FIUs.
 - (ib) report to the Commission instances where the absence of effective and efficient cooperation between FIUs derives from an inadequate or lack of transposition of Union law into national law (AM 418, Marques et al.)**
6. For the purpose of carrying out the tasks conferred on it by this Regulation, the Authority shall apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives. Where the relevant Union law is composed of Regulations and where currently those Regulations explicitly grant options for Member States, the Authority shall apply also the national legislation exercising those options.

Article 6

AM420, 423, 424, 426, 427, 429, 430, 432, 433, 434, 435, 436.

Powers of the Authority

1. With respect to the selected obliged entities, the Authority shall have the supervisory and investigative powers as specified in Articles 16 to 20 and the power to impose administrative pecuniary sanctions and periodic penalty payments as specified in Articles 21 and 22.

For the purposes of exercising those powers, the Authority may issue binding decisions addressed to individual selected entities. The Authority shall have the power to impose administrative pecuniary sanctions for non-compliance with the decisions taken in the exercise of powers laid down in Article 20 in accordance with Article 21.

2. With respect to supervisors and supervisory authorities, the Authority shall have the following powers:
 - (a) to require the submission of any information or document, including written or oral explanations, necessary for the performance of its functions, including statistical information, **common regulatory templates sent by financial obliged entities** (AM420, Benjumea), and information concerning internal processes or arrangements of national authorities;
 - (b) to issue guidelines and recommendations;
 - (c) to issue (AM423, Urtasun et al.) instructions on measures that should be taken towards non-selected obliged entities pursuant to Section 4 of Chapter II;
 - (ca) **to carry out mediation upon a request from a financial supervisor pursuant to Article 5(3) point (g).**
 - (cb) **to settle disagreements between financial supervisors with binding effect upon a request pursuant to Article 5(3), point (ga), including in the context of the AML supervisory colleges;**
 - (cc) **to take supervisory decisions directly applicable to the obliged entities concerned in accordance with this Regulation.** (AM424, Marques et al., 427 Strugariu et al.).
- 2a. **With respect to competent authorities in charge of the preparation, adoption, supervision and enforcement relating to targeted financial sanctions, the Authority shall have the following powers:**
 - (a) **to receive data and analyses from competent authorities, third countries, international organisations and other reliable sources in view of preparing new targeted financial sanctions;**
 - (b) **to collect information and statistics in relation to the tasks and activities of the competent authorities in charge of supervision and enforcement of targeted financial sanctions;**
 - (c) **to receive information on possible violations, circumvention and evasion of targeted financial sanctions;**
 - (d) **to issue guidelines and recommendations, as provided in Article 43.** (AM428, Strugariu et al.)
3. With respect to FIUs in the Member States, the Authority shall have the following powers:

- (a) to **submit requests to FIUs to make available** (AM429, Moźdzanowska et al.) data and analyses from FIUs that are relevant to the assessment of threats, vulnerabilities and risks facing the internal market in relation to money laundering and terrorist financing;
 - (b) to collect information and statistics in relation to the tasks and activities of the FIUs;
 - (c) to obtain and process information and data required for **initiating, instituting and coordinating** (AM430, Urtasun et al.) joint analyses as specified in Article 33;
 - (d) to issue guidelines and recommendations, **as provided for in Article 43** (AM431, Urtasun et al.).
- 3a. **With respect to the entities in charge of central beneficial ownership registers, the Authority shall have the power to conduct peer reviews of the fulfilment of the requirements laid down in Chapter II, Section I of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive];**
4. For the purposes of carrying out the tasks set out in Article 5(1), the Authority shall have the following powers:
- (a) to develop draft regulatory technical standards in the specific cases referred to in Article 38;
 - (b) to develop draft implementing technical standards in the specific cases referred to in Article 42;
 - (c) to issue guidelines and recommendations, as provided in Article 43;
 - (d) to issue opinions to the European Parliament, to the Council, or to the Commission as provided for in Article 44.
- 4a. **When exercising the powers provided for in paragraph 4 of this Article, and in accordance with Article 24 of Council Regulation (EU) 2017/1939, the Authority shall without undue delay inform the EPPO of any criminal conduct in respect of which it is permitted to exercise its competence in accordance with Article 22 and Article 25(2) and (3) of that Regulation. Pursuant to Article 8 of Regulation (EU, Euratom) No 883/2013^{1a}, the Authority shall transmit to OLAF without delay any information relating to possible cases of fraud, corruption or any other illegal activity affecting the financial interests of the Union.**
- After having sent the information referred to in the first subparagraph, the Authority shall, on its own initiative or upon request, provide the EPPO or the competent national judicial or law enforcement authority with any other relevant information, as required by their respective national legal framework. (AM433, Strugariu et al.)**
- 4b. **In cases where it is duly justified in order to to preserve the confidentiality of an ongoing or future criminal investigation, the Authority shall take into account any grounds raised by the EPPO, or the competent national judicial or law enforcement authority, to postpone the opening or the continuation of an investigation or of supervisory measures, the imposition of pecuniary sanctions or penalty payments by the Authority, or the performance of certain acts pertaining**

to them. (AM436, Strugariu et al.) **The modalities shall be laid down in the working agreement with the EPPO under Article 80(2).** (AM435, Strugariu et al.)

RECITALS

- (8) The powers of the Authority should allow it to improve AML/CFT supervision in the Union in various ways. With respect to selected obliged entities, the Authority should ensure group-wide compliance with the requirements laid down in the AML/CFT framework and any other legally binding Union acts that impose AML/CFT-related obligations on financial institutions. Furthermore, the Authority should carry out periodic reviews to ensure that all financial supervisors perform their tasks **adequately** (AM219, Delbos-Corfield et al.). It should facilitate the functioning of the AML supervisory colleges and contribute to convergence of supervisory practices and promotion of high supervisory standards. With respect to non-financial supervisors, including self-regulatory bodies where appropriate, the Authority should coordinate peer reviews of supervisory standards and practices and request non-financial supervisors to ~~investigate possible breaches~~ **ensure the observance** of AML/CFT requirements **in their sphere of competence**. In addition, the Authority should **be able to initiate**, coordinate **and support** (AM220, Fitzgerald) the conduct of joint analyses **by alongside** FIUs and make available to FIUs IT and artificial intelligence services and tools for secure information sharing, including through hosting of FIU.net.
- (9) With the objective to strengthen AML/CFT rules at Union level and to enhance their clarity while ensuring consistency with international standards and other legislation, it is necessary to establish the coordinating role of the Authority at Union level in relation to all types of obliged entities to assist national supervisors and promote supervisory convergence, in order to increase the efficiency of the implementation of AML/CFT measures, also in the non-financial sector. Consequently, the Authority should be mandated to prepare regulatory technical standards, to adopt guidelines, recommendations and opinions with the aim that where supervision remains at national level, the same supervisory practices and standards apply in principle to all comparable entities. The Authority should be entrusted, due to its highly specialised expertise, with the development of a supervisory methodology, in line with a risk-based approach. Certain aspects of the methodology, which can incorporate harmonised quantitative benchmarks, such as approaches for classifying the **residual risk profiles** (AM221, Benjumea) of obliged entities should be detailed in directly applicable binding regulatory measures – regulatory or implementing technical standards. ~~Other aspects, which require wider supervisory discretion, such as approaches to assessing residual risk profile and internal controls in the~~ **,drawing a distinction between** obliged entities ~~should be covered by non-binding guidelines, recommendations and opinions of the Authority.~~ **based on the type and nature of money laundering and terrorism financing risks to which they are exposed**. The harmonised supervisory methodology should take due account of, and where appropriate, leverage the existing supervisory methodologies relating to other aspects of supervision of the financial sector obliged entities, especially where there is interaction between AML/CFT supervision and prudential supervision. Specifically, the supervisory methodology to be developed by the Authority should be complementary to guidelines and other instruments developed by the European Banking Authority detailing approaches of prudential supervisory authorities with respect to

factoring ML/TF risks in prudential supervision, in order to ensure effective interaction between prudential and AML/CFT supervision.

- (10) The Authority should be empowered to develop regulatory technical standards in order to complete the harmonised rulebook established in the [please insert references – proposal for 6th Anti-Money Laundering Directive, Anti-money laundering Regulation and proposal for a recast of Regulation (EU) 2015/847]. The Commission should endorse draft regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU in order to give them binding legal effect. They should be subject to amendment only in very restricted and extraordinary circumstances, since the Authority is the actor in close contact with and knowing best the AML/CFT framework. To ensure a smooth and expeditious adoption process for those standards, the Commission’s decision to endorse draft regulatory technical standards should be subject to a time limit.
- (11) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU.

COMP C – Supervisory cooperation, methodology, thematic reviews, mutual assistance.

AMs covered: 439, 442, 444, 445, 446, 448, 449, 450, 452, 453, 454, 455, 456, 447, 458, 459, 460, 462, 463, 461, 208, 222, 223

AMs falling: 438, 52, 440, 441, 443, 53, 54, 55, 56, 451, 57, 58, 457, 59, CONT 30, AFCO 41, CONT 31, 60, 461, CONT 32, 6, CONT 5, 7, 224

SECTION 2

AML/CFT SUPERVISORY SYSTEM

Article 7

AM439, 442.

Cooperation within the AML/CFT supervisory system

1. The Authority shall be responsible for the effective and consistent functioning of the AML/CFT supervisory system.
2. The Authority and supervisory authorities shall be subject to a duty of cooperation in good faith, and to an obligation to exchange information **for the purposes of preventing** (AM439, Pereira) **money laundering and terrorism financing in accordance with this Regulation and other applicable Union law.**

Supervisory authorities shall assist the Authority in taking into account the specificities of their respective national legal framework, including where the Authority acts on matters governed by provisions of national law transposing Union law as referred to in Article 1 (2). (AM442, Marques et al.)

Article 8

AM 444, 445, 446, 447, 448, 449, 450, 452, 453, 454, 455, 456, 457.

AML/CFT supervisory methodology

1. **In cooperation with supervisory authorities, (AM444, Benjumea) the Authority shall develop and maintain an up-to-date and harmonised AML/CFT (AM446, Pereira) supervisory methodology detailing the risk-based approach to supervision of obliged entities in the Union. The methodology shall comprise guidelines, recommendations, opinions (AM445, Marques et al.) and other measures and instruments as appropriate, including in particular draft regulatory and implementing technical standards, on the basis of the empowerments laid down in the acts referred to in Article 1(2).**

2. When developing the supervisory methodology the Authority shall make a distinction between obliged entities based on the sectors in which they operate, **their type and the nature of the money laundering and terrorism financing risks to which they are exposed**. The supervisory methodology shall **be risk-based and** (AM448, 453, Ferber et al.) contain at least the following elements:
 - (a) benchmarks and methodology for classification of obliged entities into risk categories on the basis of their residual risk profile, separately for each category of obliged entities;
 - (b) approaches to supervisory review of money laundering **and terrorism financing** (AM449, Marques et al.; AM450, Pereira) risk self-assessments of obliged entities;
 - (c) approaches to supervisory review of obliged entities' internal policies and procedures of obliged entities, including customer due diligence policies **and procedures** (AM452, Benjumea), **in line with a risk-based approach to the prevention of money laundering and terrorism financing**;
 - (d) approaches to supervisory evaluation of risk factors inherent in, or related to, customers, business relationships, transactions and delivery channels of obliged entities, as well as geographical risk factors-;
 - (da) **the use and type of information contained in the common regulatory templates for financial obliged entities, which shall be based on objective and comparable AML data focused on key indicators of activity for AML/CFT purposes, due diligence, internal controls, and reporting obligations** (AM454, Benjumea; AM455, Beck).
3. The methodology shall reflect high supervisory standards at Union level and shall build on relevant international standards and guidance. The Authority shall periodically review and update its supervisory methodology, taking into account the evolution of risks affecting the internal market **and, to the extent possible, best practices and guidance developed by international standard setters, national law enforcement authorities, and FIUs** (AM456, Daly).

Article 9

AM458

Thematic reviews

1. By 31 October each year, supervisory authorities shall submit to the Authority their annual work programmes for the following year. Where those work programmes include supervisory reviews carried out on a thematic basis with the aim of assessing ML/TF risks or a specific aspect of such risks which multiple obliged entities are exposed to at the same time, the supervisory authorities shall provide the following information:
 - (a) the scope of each planned thematic review in terms of category and number of obliged entities included and the subject matter(s) of the review;
 - (b) the time-frame of each planned thematic review;

- (c) the planned types, nature and frequency of supervisory activities to be performed in relation to each thematic review, including any on-site inspections or other types of direct interaction with obliged entities, where applicable.
2. By the end of each year, the Chair of the Authority shall present to the General Board in supervisory composition as referred to in Article 46(2) a consolidated planning of the thematic reviews that supervisory authorities intend to undertake during the following year.
 3. Where the scope and Union-wide relevance of thematic reviews justify coordination at Union level, they shall be carried out jointly by the relevant supervisory authorities and shall be coordinated by the Authority. **The Executive Board may propose joint thematic reviews based on an analysis of internal risks and vulnerabilities performed by the Authority** (AM458, Urtasun et al.). The General Board in supervisory composition shall draw up a list of joint thematic reviews. The General Board in supervisory composition shall draw up a report relating to the conduct, subject-matter and outcome of each joint thematic review. The Authority shall publish that report on its website.
 4. The Authority shall coordinate the activities of the supervisory authorities and facilitate the planning and execution of the selected joint thematic reviews referred to in paragraph 3. Any direct interaction with non-selected obliged entities in the context of any thematic review shall remain under the exclusive responsibility of the supervisory authority responsible for supervision of the non-selected obliged entities and shall not be construed as a transfer of tasks and powers related to those entities within the AML/CFT supervisory system.
 5. Where planned thematic reviews at national level are not subject to a coordinated approach at the level of the Union, the Authority shall, jointly with the supervisory authorities, explore the need for and the possibility of aligning or synchronising the timeframe of those thematic reviews, and shall facilitate information exchange and mutual assistance between supervisory authorities carrying out those thematic reviews. The Authority shall also facilitate any activities that the relevant supervisory authorities may wish to carry out jointly or in similar manner in the context of their respective thematic reviews.
 6. The Authority shall ensure the sharing with all supervisory authorities of the outcomes and conclusions of thematic reviews conducted at national level by several supervisory authorities, with the exception of confidential information pertaining to individual obliged entities. The sharing of information shall include any common conclusions resulting from exchanges of information or any joint or coordinated activities among several supervisory authorities.

Article 10

AM459, 460, 461, 462, 463.

Mutual assistance in AML/CFT supervisory system

1. The Authority may, as appropriate, develop:
 - (a) new practical instruments and convergence tools to promote common supervisory approaches and best practices;

- (b) practical tools and methods for mutual assistance following:
 - (i) specific requests from supervisory authorities;
 - (ii) referral of disagreements between supervisory authorities on the measures to be taken jointly by several supervisory authorities in relation to an obliged entity.
- 2. The Authority shall facilitate and encourage at least the following activities:
 - (a) sectoral and cross-sectoral training programmes, including with respect to technological innovation;
 - (b) exchanges of staff and the use of secondment schemes, twinning and short-term visits;
 - (c) exchanges of supervisory **best** (AM459, Ferber et al.) practices between supervisory authorities, when one authority has developed expertise in a specific area of AML/CFT supervisory practices.
- 3. Each supervisory authority may submit a request for mutual assistance related to its supervisory tasks to the Authority, specifying the type of assistance that can be provided by the staff of the Authority, the staff of one or more supervisory authorities, or a combination thereof. If the request concerns activities that relate to the supervision of specific obliged entities, the requesting supervisory authority shall **transmit to the Authority ensure that access to** any information and data necessary for the provision of assistance ~~may be granted~~ **in accordance with this Regulation and other applicable Union law.** (AM460, Pereira) The Authority shall keep and regularly update the information on specific areas of expertise and on the capacities of supervisory authorities to provide mutual assistance.
- 4. Where the Authority is requested to provide assistance for the performance of specific supervisory tasks at national level towards non-selected obliged entities, the requesting supervisory authority shall detail the tasks for which support is sought in its request. The assistance shall not be construed as the transfer of supervisory tasks, powers, or accountability for supervision of the non-selected obliged entities from the requesting supervisory authority to the Authority.
- 5. The Authority shall make every effort to provide the requested assistance **if it deems the request appropriate** (AM462, Marques et al.), including by mobilising **its** (AM463, Urtasun et al.) own human resources as well as by ensuring mobilisation of resources at supervisory authorities on a voluntary basis.
- 6. By the end of each year, the Chair of the Authority shall inform the General Board in supervisory composition of the resources that the Authority will allocate to providing such assistance.
- 7. Any interaction between the staff of the Authority and the obliged entity shall remain under the exclusive responsibility of the supervisory authority responsible for the supervision of that entity, and shall not be construed as a transfer of tasks and powers related to individual obliged entities within the AML/CFT supervisory system.

RECITALS

- (12) Since there are no sufficiently effective arrangements to handle AML/CFT incidents involving cross-border aspects it is necessary to put in place an integrated AML/CFT supervisory system at Union level that ensures consistent high-quality application of the AML/CFT supervisory methodology and promotes efficient cooperation between all relevant competent authorities. For these reasons, the Authority and national AML/CFT supervisory authorities ('supervisory authorities') should constitute an AML/CFT supervisory system **as precisely defined in this Regulation** (AM208, Możdżanowska et al.). This would also benefit supervisory authorities when facing specific challenges, for example vis-à-vis an enhanced AML/CFT risk or due to a lack of resources, as within that system mutual assistance should be possible on request. This could involve exchange and secondments of personnel, training activities and exchanges of best practices, **including on data protection (AM222, Tardino et al.)**. Furthermore, the Commission could provide technical support to Member States under Regulation (EU) 2021/240 of the European Parliament and of the Council to promote reforms aimed at reinforcement of the fight against money laundering.⁵
- (13) Considering the important role of thematic reviews in AML/CFT supervision across the Union as they enable to identify and compare the level of exposure to risks and trends in relation to obliged entities under supervision, and that currently supervisors in different Member States do not benefit from these reviews, it is necessary that the Authority identifies national thematic reviews that have a similar scope and time-frame and ensures their coordination at the level of the Union. To avoid situations of possibly conflicting communications with supervised entities, the coordination role of the Authority should **in principle** be limited to interaction with relevant supervisory authorities, and should not include any direct interaction with non-selected obliged entities, **except in duly justified cases. (AM223, Delbos-Corfield et al.)** For the same reason, the Authority should explore the possibility of aligning or synchronising the timeframe of the national thematic reviews and facilitate any activities that the relevant supervisory authorities may wish to carry out jointly or similarly.

⁵ Regulation (EU) 2021/240 of the European Parliament and of the Council of 10 February 2021 establishing a Technical Support Instrument (OJ L 57, 18.2.2021, p. 1).

COMP D – Central database, information sharing.

AMs covered: 465, 466, 467, 468, 469, 470, 471, 472, 476, 477, 478, 479, 480, 482, 483, 484, 495, 496, 498, 486, 487, 488, 489, 490, 492, 500, 508, 225, 227, 862, 863, 468, 470, 226, 233, 229, 231, 234, 235, 230

AMs falling: 464, AFCO 42, 61, CONT 34, 489, 490, 473, 474, 475, 485, 486, 488, 491, 493, 494, 495, 496, CONT 35, 497, 498, 499, 62, 492, 500, 481, CONT 33, 63, 502, 501, 505, 506, 504, 503, 64, 508, 507, 509, 228, 8, 9, 232, 11, 12.

Article 11

AM467, 468, 469, 470, 471, 472, 474, 476, 477, 478, 479, 480, 481, 482, 483, 484, 486, 487, 488, 489, 490, 492, 495, 496, 498, 500.

Central AML/CFT database

1. The Authority shall establish and keep up to date a central database of information collected pursuant to **this Article**. The Authority shall analyse the information received and ensure that it is made available to supervisory **authorities and non-AML/CFT** (AM465, Urtasun et al.; AM466, Marques et al.) **as well as other national authorities and bodies competent for ensuring compliance with Directive 2014/17/EU [consumer credit directive], Directive (EU) 2015/2366 [PSD], Directive 2009/110/EC [e-money Directive], Directive 2009/138/EC [Solvency II], Directive 2014/65/EU [Mifid II], and Regulation [MiCA] and the European Supervisory Authorities** on a need-to-know and confidential basis. The Authority may share the results of its analysis **and inspections** on its own initiative with supervisory authorities, **including non-AML/CFT authorities**, (AM467, Benjumea) for the purposes of facilitating their supervisory activities.
2. The supervisory authorities shall transmit to the Authority at least the following information, including the data related to individual obliged entities:
 - (a) a list of all supervisory authorities and self-regulatory bodies entrusted with supervision of obliged entities, including information about their mandate, tasks and powers;
 - (b) statistical information about the type and number of supervised obliged entities in each Member State and basic information about the risk profile;
 - (ba) **the information included in the common regulatory templates submitted by financial obliged entities** (AM468, Benjumea);
 - (c) binding measures and sanctions taken in the course of supervision of individual obliged entities;
 - (ca) **consolidated information from financial obliged institutions and that might be relevant for benchmarking purposes in the risk assessment process referred to in Articles 12 and 13, or for other supervisory purposes** (AM470, Benjumea);

- (d) any advice provided to other(AM472, Marques et al.) authorities in relation to authorisation procedures, withdrawal of authorisation procedures, and fit and proper assessments of shareholders or members of the management body of individual obliged entities;
- (e) reports on outcomes of supervisory activities;
- (f) results from supervisory inspections of files concerning politically exposed persons, their family members and their associates;
- (g) statistical information regarding performed supervisory activities over the past calendar year, including the number of off-site and on-site inspections;
- (h) statistical information about staffing and other resources of public authorities;
- (ha) information from competent authorities relating to weaknesses identified during supervision and authorisation procedures in the processes and procedures, governance arrangements, fitness and propriety, acquisition of qualifying holdings, business models and activities of financial sector operators in **relation to preventing and countering money laundering and terrorist financing (AM469, Marques et al.)**
- (hb) measures taken by competent authorities in response to the following weaknesses affecting one or more requirements of the legislative acts referred to in Article 1(2) of this Regulation, Article 1(2) of Regulation (EU) No 1094/2010 and Article 1(2) of Regulation (EU) No1095/2010 and of any national laws transposing them with regard to **preventing or** countering the use of the financial system for the purpose of money laundering or terrorist financing:
 - (a) a breach or a potential breach by a financial sector operator of such requirements,
 - (b) the inappropriate or ineffective application by a financial sector operator of such requirements, or
 - (c) the inappropriate or ineffective application by a financial sector operator of its internal policies and procedures to comply with such requirements; (AM471, Marques et al.)
- (hc) **weaknesses and failures of obliged entities to comply with [AMLR] and with any measures taken by supervisory authorities in response to weaknesses affecting one or more requirements of [AMLR].**

2a. **The Authority shall publish the information collected pursuant to paragraph 2 point (a), (b), (g) and (h). A summary of non-confidential findings regarding the information collected pursuant paragraph 2 point (c), (d), (e), (f), (ha), (hb), (hc) shall be made available to obliged entities (AM476, Urtasun et al.; AM478, Strugariu et al.; AM479, Castaldo et al.; AM480, Schirdewan).**

3. The Authority may request supervisory authorities **and non-AML/CFT authorities** to provide other information in addition to that referred to in paragraph 2. **In response to the Authority's request, the supervisory authorities or the non-AML/CFT authorities shall update any information previously provided by them.**

Non-AML/CFT authorities, as well as other national authorities and bodies competent for ensuring compliance with the requirements of Directive 2014/17/EU [consumer credit directive], Directive (EU) 2015/2366 [PSD],

Directive 2009/110/EC [e-money Directive], Directive 2009/138/EC [Solvency II], Directive 2014/65/EU [Mifid II], and Regulation [MiCA] **and the European Supervisory Authorities**, shall transmit to the Authority information relating to weaknesses identified during ongoing supervision and authorisation procedures in the processes and procedures, governance arrangements, fitness and propriety, acquisition of qualifying holdings, business models and activities of credit and financial institutions as defined in Article 2 of [AMLR] in relation to preventing and countering money laundering and terrorist financing as well as measures taken by those authorities, in response to material weaknesses affecting one or more requirements of the legislative acts referred to in Article 1(2) of Regulation EU (No) 1093/2010, Article 1(2) of Regulation (EU) No 1094/2010 and Article 1(2) of Regulation (EU) No 1095/2010 and of any national laws transposing them, respectively, with regard to the institution's ability to tackle ML/TF risks effectively, and as such, the integrity and transparency of the financial system of the Union.

Non-AML/CFT authorities may share with the Authority any additional information, within the boundaries of their mandates and tasks, deemed relevant to the prevention and countering of money laundering or terrorist financing (AM477, Marques et al.; AM482, Castaldo et al.; AM483, Urtasun et al.; AM484, Strugariu et al.).

- 3a. **For the purposes of paragraph 1, the Authority shall take over the central AML/CFT database established in accordance with Article 9a of Regulation EU (No) 1093/2010 (EuReCA) and shall become the owner of its content and the technical system operating EuReCA.**

With a view to ensuring a smooth transition until the Authority is operationally in a position to fully take over and keep the EuReCA database up to date, the European Banking Authority shall continue receiving information, analysing it and making it available in accordance with Article 9a of Regulation EU (No) 1093/2010 until {insert date dd.mm.yyyy corresponding to 18months after adoption}.

4. Any supervisory authority, any non-AML authority, as well as other national authorities and bodies competent for ensuring compliance with the requirements of Directive 2014/17/EU [consumer credit directive], Directive (EU) 2015/2366 [PSD], Directive 2009/110/EC [e-money Directive], Directive 2009/138/EC [Solvency II], Directive 2014/65/EU [Mifid II], and Regulation [MiCA], or the European Supervisory Authorities may address to the Authority a reasoned request for information collected pursuant to **this Article** (AM496, Strugariu et al.) that is relevant for its supervisory activities. The Authority shall assess those requests and provide the information requested on a need-to-know basis and confidential basis and in a timely manner. The Authority shall inform the authority that has initially provided the requested information, of the identity of the requesting supervisory or other authority, the identity of an obliged entity concerned, the reason for the information request as well as whether the information has been provided to the requesting authority. **Where the Authority decides not to provide the requested information, it shall provide a reasoned justification for that decision.** (AM495, Marques et al.)

- 4a. **The Authority shall make available to all supervisors consolidated information of obliged entities that might be relevant for supervisory purposes or that might**

inform benchmarks and the methodology for classification in the risk assessment process. (AM498, Strugariu et al.)

- 4b. **The Authority shall develop draft regulatory technical standards specifying the definition of weaknesses as referred to in paragraph 2, points (ha), (hb) and (hc), including the corresponding situations where weaknesses may occur, the materiality of weaknesses and the practical implementation of the information collection by the Authority as well as the type of information that should be provided pursuant to paragraph 2, points (ha), (hb) and (hc). The Authority shall also specify the format, the transmission procedure and information included in the common regulatory templates referred to in paragraph 2, point (ba).**

To that end, the Authority shall consider the volume of the information to be provided and the need to avoid duplication. It shall also set out arrangements to ensure effectiveness, confidentiality and the protection of personal data, specifying the data types and purposes for which personal data is processed and collected.

The Authority shall submit the draft regulatory technical standards to the Commission by 18 months after the entry into force of this Regulation.

The Commission is empowered to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 38 of this Regulation.

- 4c. **Personal data collected in accordance with this Article may be kept on an identifiable form for a period of up to ten years after the date of collection of the data by the Authority, at the end of which personal data shall be deleted. Based on a regular assessment of their necessity, personal data may be deleted before the expiry of that period on a case-by-case basis.**

Article 11a

Information requests directly to obliged entities

1. **The supervisory authorities and the Authority shall provide each other with all necessary information regarding selected and non-selected obliged entities in order to carry out their respective duties, powers and legal mandate, provided that the supervisory authorities and the Authority have legal access to the relevant information.**
2. **Where information is not available or is not made available under paragraph 1 in a timely manner, the Authority may address a request directly to the relevant obliged entities or associations of obliged entities. The request shall be duly justified, include the legal basis of the request, specify the information required and fix a reasonable time limit within which the information is to be provided. The supervisory authority shall receive a copy of the request.**

The addressees of such a request shall provide the Authority, within the time limit specified in the request, with clear, accurate and complete information, provided that they have legal access to the relevant information. Upon a duly justified request to the Authority, the addressees may ask for a single extension of the deadline.

The request shall be sent in accordance with the language arrangements established, mutatis mutandis, in Article 27.

3. The Authority **shall** use confidential information received pursuant to this Article only for the purposes of carrying out the duties assigned to it under this Regulation and **other** applicable Union law.
4. The Authority shall develop draft regulatory technical standards setting out the modalities with regard to information requests addressed to obliged entities as provided in paragraph 1.

The Authority shall submit the draft regulatory technical standards to the Commission by [1 January 2025]. The Commission is empowered to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Article 38.

Article 11b

AM508.

Information sharing with FIUs and Europol

Where **the Authority**, in the course of its supervisory activities **in relation to** obliged entities under Sections 3, 4 and 5 of this Chapter, **suspects that** facts that **it has examined in the framework of those supervisory activities** could be related to money laundering, to a predicate offence or to terrorist financing, it shall **promptly transmit such** information to the competent FIUs.

Moreover, where the facts referred to in the first subparagraph have a cross-border relevance, **the Authority** shall promptly **transmit the information** to Europol.

Without prejudice to [GDPR, LED and Regulation (EU) 2018/1725], to the extent that information referred to in the first and second subparagraphs contain personal data within the meaning of any of those legal acts, the Authority may transmit those personal data to the relevant FIUs and Europol exclusively where such transmission is strictly necessary for the relevant FIUs to perform their respective mandates in accordance with applicable Union and national law, or for Europol to perform its mandate in accordance with [the Europol regulation].

For the purposes of the second subparagraph, AMLA may rely on cooperation agreements concluded with Europol in accordance with Article 80 of this Regulation. (AM508, Strugariu et al.)

RECITALS

- (14) The efficient usage of data leads to better monitoring and compliance of firms. Therefore, both direct and indirect supervision by the Authority and supervisory authorities of all obliged entities across the system should rely on expedient access to relevant data and information about the obliged entities themselves and the supervisory actions and measures taken towards them, **subject to limited retention periods in accordance with the applicable data protection framework.** To that end, **and taking into account the confidential and sensitive nature of the information,** (AM227, Ferber et al.) the Authority should establish a central AML/CFT database with information collected from all supervisory authorities, and should make such information **selectively**

available to any supervisory authority within the system **when necessary, on a confidential and need-to-know basis. To that end, the Authority should use innovative technological solutions, including block-chain.** (AM225, 862, Pereira; AM863, Beck) This data should also cover withdrawal of authorisation procedures, fit and proper assessments of shareholders and members of individual obliged entities as this will enable relevant authorities to duly consider possible shortcomings of specific entities and individuals that might have materialised in other Member States. The database should also include **the information included in the common regulatory templates submitted by selected and non-selected obliged entities, consolidated information from selected and non-selected obliged entities and that might be relevant for benchmarking purposes in the risk assessment process for the selection of directly supervised obliged entities,** (AM468, 470, Benjumea) **risk indicators of obliged entities, qualitative information regarding supervisory plans,** (AM226, Delbos-Corfield et al.) statistical information about supervisory and other public authorities involved in AML/CFT supervision **as well as information pertaining to weaknesses identified during supervision and authorisation procedures.** Such information would enable effective oversight by the Authority of the proper functioning and effectiveness of the AML/CFT supervisory system. The information from the database would enable the Authority to react in a timely manner to potential weaknesses and cases of non-compliance by non-selected obliged entities. Pursuant to Article 24 of Council Regulation (EU) 2017/1939⁶, the Authority will without undue delay report to the EPPO any criminal conduct in respect of which it could exercise its competence in accordance with Article 22 and Article 25(2) and (3) of that Regulation. Pursuant to Article 8 of Regulation 883/2013⁷, the Authority will transmit to OLAF without delay any information relating to possible cases of fraud, corruption or any other illegal activity affecting the financial interests of the Union.

- (14aa) **The Authority should establish and keep up-to-date a central database of information relevant for the AML/CFT supervisory system. This database should include in particular information regarding the fit-and-proper assessment, obliged entities' weaknesses in complying with AML/CFT requirements, sanctions and supervisory responses to those weaknesses, results of inspections, outcomes of supervisory activities, results from supervisory inspections and other relevant information for risk assessment purposes. The personal data processed should be retained for a period of up to ten years after the date of collection of the data by the Authority. This period is strictly necessary and proportionate for the purpose of supervisory activities carried out by the Authority and supervisory authorities. The length of the data retention period ensures that the Authority and supervisory authorities retain access to the necessary information on the risk assessment, business activities, controls in place and breaches of individual obliged entities in order to carry out their duties, which requires them to access case-related information over a longer period of time. This period is notably necessary since supervisory authorities should take into account, among other factors, the gravity, the duration and the repetitiveness of the breach to determine the level of sanctions**

⁶ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

⁷ Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1073/1999 (OJ L 248, 18.9.2013, p. 1).

or measures to be applied, which requires to analyse case-related information regarding a longer period of reference. Similarly, this duration is necessary with regard to information from fit-and-proper assessment of shareholders or members of the management in order to ensure that supervisory authorities have sufficient information to assess whether they are of good repute, act with honesty and integrity and possesses knowledge and expertise necessary to carry out their functions, and to ensure ongoing monitoring of those conditions as required by [AMLD]. **Personal data should be deleted where it is no longer necessary.** On a case-by-case basis, and based on a regular assessment of their necessity, personal data may be deleted before the expiry of that period.

- (14a) To enable the Authority to carry out its duties, the supervisory authorities should provide the Authority with all the necessary information regarding selected and non-selected obliged entities, provided that they have legal access to the relevant information. (AM233, Tardino et al.) In exceptional and duly justified cases, the Authority should be able to address a request directly to the relevant obliged entities or associations of obliged entities in order to conduct its tasks related to AML/CFT supervision. (AM229, Beck; AM231, Benjumea; AM234, Delbos-Corfield et al.)
- (14b) To bring AML/CFT supervision to an effective and consistent level across the Union, and to carry out their duties, supervisory authorities and the Authority should cooperate and exchange all the necessary information regarding selected and non-selected obliged entities. (AM235, Tardino et al.) The Authority should ensure that adequate and effective cooperation mechanisms are put in place and implemented so that it can exchange information with supervisors, including non-AML/CFT authorities, and other stakeholders.
- (14c) The Authority should also promote exchanges between supervisory authorities and obliged entities in a structured and efficient manner. To that end, the Authority should develop a structured system, including questionnaires and **the common regulatory** templates, available to all supervisors, that enables the collection of information while avoiding double reporting.
- (14d) In the context of its supervisory tasks, the Authority should also actively cooperate with competent FIUs and Europol. Where the Authority, in the course of its supervisory and oversight activities, discovers facts, that could be related to money laundering, to a predicate offence or to terrorist financing, it should ensure that the information is promptly made available to the competent FIUs and, **where the facts have a cross-border relevance**, to Europol within their respective areas of competence. (AM230, Strugariu et al.)

COMP E – Direct supervision assessments, selection.

AMs covered: 510, 512, 513, 514, 515, 516, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 549, 550, 551, 552, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 569, 570, 571, 572, 573, 575, 578, 579, 580, 583, 585, 587, 588, 618, 592, 593, 494, 595, 596, 610, 611, 612, 617, 619, 620, 600, 603, 604, 605, 606, 613, 614, 616, 238, 241, 242, 243, 250, 251,

AMs falling: 511, 517, 65, 532, 533, 535, 68, 542, 70, 71, 546, 544, 545, 547, 549, CONT 36, 548, 553, 554, 555, 556, 73, 566, 74, CONT 37, 568, 570, 579, 581, 582, 583, 584, 586, 587, 589, 75, 590, 591, 594, 76, 593, 592, 595, 596, 601, 607, 608, 612, 611, 610, 616, 615, 617, 619, 620, 236, 237, 238, 240, 13, 239, 241, 242, 244, 245, 247, 248, 249, 252, 16, 253, 254, 255, 17

SECTION 3

DIRECT SUPERVISION OF SELECTED OBLIGED ENTITIES

Article 12

AM510, 512, 513, 514, 515, 516, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 549, 550, 551, 552, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 569, 570, 571, 572, 573, 575, 578, 579, 580, 583, 585, 587, 588, 618.

Assessment of financial sector obliged entities for the purposes of selection for direct supervision

1. For the purposes of carrying out the tasks listed in Article 5(2), the Authority, **with the collaboration of financial supervisors in accordance with paragraph 1b**, (AM512, Marques et al.) shall carry out a periodic assessment **of the obliged entities listed in paragraph 3** (AM512, Marques et al.; AM516, Delbos-Corfield et al.) ~~of the following obliged entities~~, based on criteria and following the process specified in paragraphs 2 to 6 of this Article and in Article 13: **where they operate establishments as defined in Article 2(8) of [proposal for 6th Anti-Money Laundering Directive - COM/2021/423 final], or under the freedom to provide services, in at least four Member States, including the Member State of establishment.** (AM512, Marques et al.; AM513, Strugariu et al.; AM514, Schirdewan; AM515, Benjumea; AM523, Delbos-Corfield; AM524, Daly; AM525, Ferber; AM526, Seekatz)
 - (a) ~~credit institutions that are established in at least seven Member States, including the Member State of establishment and the Member States where they are operating via subsidiaries or branches;~~ (AM518, Benjumea; AM519, Marques et al.; AM520, Schirdewan; AM521, Strugariu et al. AM522, Fitzgerald)

~~(b) other financial institutions that operate in at least ten Member States, including the Member State of establishment, another Member State where they are operating via a subsidiary or a branch, and all other Member States where they are operating by means of direct provision of services or via a network of representative agents. (AM527, Benjumea; AM528, Fitzgerald; AM529, Strugariu et al.; AM530, Schirdewan; AM531, Marques et al.)~~

(1a) In cases where all of the obliged entities established in a particular Member State operate in fewer than four Member States, whether through establishments or through the freedom to provide services, the periodic assessment referred to in paragraph 1 shall be carried out on the obliged entities listed in paragraph 3 which are established in that Member State. (AM535, Strugariu et al.)

(1b) The Authority shall receive all necessary information from supervisory authorities, and, in exceptional cases, from the obliged entities, in order to carry out the periodic assessment of individual obliged entities. That information shall be included in the common reporting templates referred to in Article 5(3), point (e). (AM522, Fitzgerald; AM585, Benjumea)

(1c) The Authority shall keep the relevant non-AML/CFT authorities informed of the assessments provided for in paragraphs 1, (1a) and (1b) in cases where the obliged entities fall within their supervisory remits. (AM534, Delbos-Corfield; AM536, Marques et al.)

2. **After having assessed the residual (AM542, Benjumea) risk profile of the assessed obliged entities referred to in paragraph 1, the Authority, point (a) or (b) shall classify them as low, medium, substantial or high in each jurisdiction they operate in, based on the benchmarks and following the methodology set out in the regulatory technical standard referred to in paragraph 5. (AM 538 Delbos et al.; AM539, Schirdewan; AM540, Marques et al.; AM541, Fitzgerald; AM542, Benjumea)**

3. The methodology for classifying the **residual** risk profile shall be established separately for at least the following categories of obliged entities, taking into account the specificities of each sector: (AM543, Benjumea)

(a) credit institutions;

(b) bureaux de change;

(c) collective investment **undertakings** (AM544, Benjumea; AM545, de Lange; AM546, Hansen et al.);

(d) credit providers other than credit institutions;

(e) e-money institutions;

(f) investment firms;

(g) payments service providers;

(h) life insurance undertakings;

(i) life insurance intermediaries;

(j) other financial institutions.

(ja) crypto-asset service providers. (AM547, Marques et al.; AM549, Benjumea ; AM550, Schirdewan; AM551, de Lange; AM552, Delbos-Corfield)

4. For each category of obliged entities referred to in paragraph 4.3 (AM557, Marques et al.; AM558, Delbos-Corfield; AM559, Schirdewan; AM560, Benjumea), the benchmarks in the assessment methodology shall be based on the risk factor categories related to customer, products, services, transactions, delivery channels, geographical areas, **and the risk management systems put in place by the obliged entities (AM618, Benjumea)**. The benchmarks shall be established for at least the following indicators of ~~inherent~~ **residual** risk (AM560, Benjumea) in any Member State they operate in:
- (a) with respect to customer-related risk: the share of non-resident customers **from third countries**, (AM566, Hansen et al.) the presence and share of customers identified as Politically Exposed persons ('PEPs') **and the presence and share of customers located in jurisdictions listed in Annex I to the EU list of non-cooperative jurisdictions for tax purposes, in jurisdictions continuously listed in Annex II to the EU list of non-cooperative jurisdictions for tax purposes for a period of over three years, and in jurisdictions identified and designated as referred to in Chapter III Section 2 of [please insert reference – proposal for Anti-Money Laundering Regulation]**; (AM561, Schirdewan; AM562, Marques et al.; AM563, Strugariu et al.; AM564, Castaldo et al.; AM565, Daly; AM567, Delbos-Corfield et al.)
 - (b) with respect to products and services offered:
 - (i) the significance and the trading volume of products and services identified as the most potentially vulnerable to money laundering and terrorist financing risks at the level of the internal market in the supra-national risk assessment or at the level of the country in the national risk assessment;
 - (ii) the volume of the deposit and payment account services provided under the freedom to provide services, **together with other products and services identified as potentially vulnerable to ML/FT risks**; (AM569, Benjumea)
 - (iii) for money remittance service providers, the significance of aggregate annual emission and reception activity of each remitter in a jurisdiction, **in particular those with structural weaknesses in its AML/CFT detection and prevention systems under international standards**; (AM570, Benjumea)
 - (iiia) **the volume of products or transactions that might favour anonymity, including crypto-assets which have in-built anonymisation**; (AM571, Marques et al.)
 - (iiib) **the significance of privacy wallets, mixers and tumblers and other anonymising software or techniques used for obfuscating transactions**; (AM572, Marques et al.)
 - (c) with respect to geographical areas:
 - (i) the annual volume of correspondent banking services, **or correspondent crypto-asset services**, provided by Union financial sector entities in third countries, **in particular those identified as vulnerable in its AML/CFT detection and prevention systems under international standards**; (AM573, Benjumea; AM575, Marques et al.)

- (ii) the number and share of correspondent banking **or crypto-asset** clients (AM578, Marques et al.) from third countries with structural weaknesses in their AML systems identified by global standard setting bodies;
 - (iii) the volume of activity of **crypto-asset** (AM580, Marques et al.) service providers registered or licensed in third countries and operating as financial institutions in the Union.
5. The Authority shall develop draft regulatory technical standards setting out the methodology with the benchmarks referred to in paragraph 4 for classifying the **residual (AM585, Benjumea)** risk profile of **the obliged entities listed in paragraph 3** in each Member State **they** operate in as low, medium, substantial or high. (AM588, Schirdewan)
- The Authority shall submit the draft regulatory technical standards to the Commission by [1 January 2025].
- The Commission is empowered to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 38 of this Regulation.
6. The Authority shall review the benchmarks and methodology at least every three years. Where amendments are required, the Authority shall submit amended draft regulatory technical standards to the Commission.

Article 13

AM592, 593, 595, 596, 597, 598, 599, 600, 603, 604, 605, 606, 610, 611, 612, 613, 614, 617, 619, 620

The process of listing selected obliged entities

1. ~~The following~~ **For the first selection process, the 40 obliged entities assessed pursuant to Article 12 that have the highest residual risk profile in at least two Member States shall qualify as a selected obliged entity:**
- As of the second selection process, the number of obliged entities that qualify as a selected obliged entity may be increased by up to 10% in every successive selection process, up to a maximum of 60. The Commission shall, to that end, provide an impact assessment taking into account the budgetary impact of such an increase. (AM593, Strugariu et al., AM594, Delbos-Corfield et al.; AM595, Marques et al.; AM596, Seekatz)**
- (a) ~~each credit institution assessed pursuant to Article 12 that has a high inherent risk profile in at least four Member States and that has been under supervisory or other public investigation for material breaches of the acts referred to in Article 1(2) in at least one of those Member States in the previous three years;~~
 - (b) ~~each financial institution assessed pursuant to Article 12 that has a high inherent risk in at least one Member States where it is established or operates via a subsidiary or a branch, and at least five other Member States where it operates via direct provision of services or via a network of representative agents.~~
- 1a. **Where in a Member State no established, registered or authorised obliged entity or group thereof qualifies as a selected obliged entity pursuant to paragraph 1, the obliged entity or group thereof that has the highest residual risk profile**

pursuant to the methodology referred to in Article 12(3) shall be designated as a selected obliged entity. (AM592, Boyer et al.; AM 610, Seekatz; AM611, Marques et al.; AM612, Strugariu et al.; AM619, Karas et al.; AM620, Hansen et al.)

If several obliged entities or groups thereof have a high residual risk profile, then the selected obliged entities shall be the ones operating in the highest number of Member States through either establishments or under the freedom to provide services. If several obliged entities or groups thereof operate in the same number of Member States, then the selected obliged entities shall be the ones with the highest ratio of transaction volume with third countries to total transaction volume as measured over the last financial reporting year. (AM 610, Seekatz)

2. The Authority shall commence the first selection process on 1 July 2025 and shall conclude the selection within one month. The selection shall be made every three years after the date of commencement of the first selection, and shall be concluded within one month in each selection period. The list of the selected obliged entities shall be published by the Authority without undue delay upon completion of selection process. The Authority shall commence the direct supervision of the selected obliged entities five months after publication of the list.
3. A selected obliged entity shall remain subject to direct supervision by the Authority **as long as the entity is listed under paragraph 2.** (AM617, Daly)

RECITALS

- (15) With the objective of ensuring a more effective and less fragmented protection of the Union's financial framework, a limited number of the riskiest obliged entities should be directly supervised by the Authority. As ML/TF risks are not proportional to the size of the supervised entities, other criteria should be applied to identify the most risky entities. In particular, two categories should be considered: high-risk cross-border credit and financial institutions with activity in a significant number of Member States, selected periodically; and, in exceptional cases, any entity **whose serious, systematic or repeated** breaches of applicable requirements are not sufficiently or in a timely manner addressed by its national supervisor. **In addition, the Authority shall ensure that it directly supervises at least one entity per Member State. This will enhance the prevention of ML/TF and ensure that supervisory practices are aligned across the Union.** (AM251, Strugariu et al.) Those entities would fall under the category of 'selected obliged entities'.
- (16) **ML/TF supervision should be risk-based.** (AM241, Ferber et al.) The first category of credit and financial institutions, **including crypto-asset service providers,** or groups of such institutions should be assessed every three years, based on a combination of objective criteria related to their cross-border presence and activity, and criteria related to their inherent ML/FT risk profile. ~~Only large complex financial groups present in a~~ **The Authority should assess those institutions based on residual risk benchmarks in order to better target the riskiest of those obliged entities.** (AM238, Beck; AM242, Benjumea) **In order to ensure that direct supervision by the Authority has added value, only cross-border entities operating in a minimum** number of Member States ~~that could be more efficiently supervised at Union level should be included in the selection process.~~ **With respect to credit institutions, minimal cross border presence for inclusion in the selection process should be based on the number of subsidiaries and branches in**

different Member States, because risky banking activities of significant volume require a local presence in a form of **, either through having** an establishment. Other financial sector entities may, in contrast, carry out activities that can be sufficiently risky from an ML/TF perspective by means of direct provision of services, for example via a network of agents, but may not have established subsidiaries or branches in a large number of Member States. Therefore, applying the same cross border criteria, that is to say the one related to freedom of establishment, would result in scoping out large financial sector entities that can have a significant risk profile in a number of Member States, without being established there. Since the volume of activities via direct provision of **or as a result of the freedom to provide** services is generally smaller than the volume of activities carried out in a branch or a subsidiary, it is appropriate to consider only groups that are established in at least two Member States, but provide services directly or via a network of agents in at least eight more Member States. **, should fall within the remit of the Authority. (AM240, Strugariu et al.)**

- (17) In order to ensure that only the riskiest obliged entities ~~among those with significant cross border operations~~ are supervised directly at the level of the Union, the assessment of their inherent **and residual** risk should be harmonised. Currently, there are various national approaches and supervisory authorities use distinct benchmarks for assessment and classification of **the inherent and residual** ML/TF risk of obliged entities. Using these national methodologies for selection of entities for direct supervision at Union level could lead to a different playing field among them. Therefore, the Authority should be empowered to develop regulatory technical standards laying out a harmonised ~~methodology~~ **methodologies** and benchmarks for categorising ~~the inherent ML/TF risk~~ as low, medium, substantial, or high. ~~The methodology~~ **Authority should also develop common residual risk benchmarks. (AM243, Benjumea)** ~~Those methodologies~~ should be tailored to particular types of risks and therefore should follow different categories of obliged entities which are financial institutions in accordance with the Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [OP please insert the next number for COM(2021)420]. ~~That methodology, as well as crypto-asset service providers. Those methodologies~~ should be sufficiently detailed and should establish specific quantitative and qualitative benchmarks considering at least the risk factors related to types of customers served, products and services offered, and geographical areas, including third country jurisdictions that obliged entities operate in or are related to. Specifically, each assessed obliged entity would have its inherent **and residual** risk profiles classified in each Member State where it operates in a manner consistent with the classification of any other obliged entity in the Union. The quantitative and qualitative benchmarks would allow such classification to be objective and not dependent on the discretion of a given supervisory authority in a Member State, or the discretion of the Authority.
- (18) The final selection criterion should warrant a level playing field among directly supervised obliged entities, and to that end, no discretion should be left to the Authority or supervisory authorities in deciding on the list of obliged entities that should be subject to direct supervision. Therefore, where a given assessed obliged entity operates cross-border and falls within the high risk category in accordance with the harmonised methodology in a minimum number of Member States, it should be deemed a selected obliged entity. ~~In case of credit institutions, the cross border aspect should be addressed by including those credit institutions that are classified as high risk in at least four Member States and where in at least one Member State of those four the entity has been~~

~~under supervisory or other public investigation for material breaches of AML/CFT requirements. In case of other financial institutions, the cross border aspect should be addressed by including those financial institutions that are classified as high risk in at least one Member State where they are established and at least five other Member States where they operate by means of direct provision of services. (AM250, Delbos-Corfield et al.)~~

- (19) To provide transparency and clarity to the relevant institutions, the Authority should publish a list of the selected obliged entities within one month of commencement of a selection round, after verifying the correspondence of information provided by the financial supervisors to the cross-border activities criteria and the inherent **and residual risk methodologies**. Therefore it is important that at the beginning of each selection period, the relevant financial supervisors **and, if necessary, the obliged entities themselves**, provide the Authority with up-to-date statistical information to determine the list of financial institutions eligible for assessment in accordance with the assessment entry criteria relating to their cross-border operations. In this context, the financial supervisors should inform the Authority about the inherent **and residual** risk category that a financial institution falls into in their jurisdictions in accordance with the ~~methodology~~ **methodologies** laid down in the regulatory technical standards. The Authority should then assume the tasks related to direct supervision five months after the publication of the list. That time is needed to appropriately prepare the transfer of supervisory tasks from national to Union level, including the formation of a joint supervisory team, and adopting any relevant working arrangements with the relevant financial supervisors.
- (20) To ensure legal certainty and a level playing field among selected entities, any selected entity should remain under direct supervision of the Authority for at least three years, even if since the moment of selection and in the course of the three years it ceases to meet any of the cross-border activity or risk-related criteria due to e.g. potential consolidation, expansion or re-allocation of activities carried out via establishments or freedom to provide services. The Authority should also ensure that sufficient time is allocated to preparation by the obliged entities and their supervisory authorities to the transfer of supervision from national to Union level. Therefore, each subsequent selection should commence six months before the end-date of the three year period of supervision of the previously selected entities.
- (21) The relevant actors involved in the application of the AML/CFT framework should cooperate with each other in accordance with the duty of sincere cooperation enshrined in the Treaties. In order to ensure that the AML supervisory system composed of the Authority and supervisory authorities functions as an integrated mechanism, and that jurisdiction-specific risks and local supervisory expertise are duly taken into account and well utilised, direct supervision of selected obliged entities should take place in the form of joint supervisory teams. These teams should be led by a staff member of the Authority coordinating all supervisory activities of the team. ~~To ensure an adequate understanding of possible national specificities, the team leader ('JST coordinator') should be stationed in the Member State where a selected entity has its headquarter.~~ The Authority should be in charge of establishment and composition of the joint supervisory team, and **the each local supervisors supervisor involved in the supervision of the selected obliged entity** should ensure that a sufficient number of ~~their~~ **its** staff members are appointed to the team, taking into account the risk profile of the selected entity in ~~their~~ **its** jurisdiction **as well as its overall volume of activity**.

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COMP F – Cooperation, general investigations and on-site inspections.

AMs covered: 623, 625, 629, 630, 632, 634, 635, 636, 638, 641, 646

AMs falling: 79, 622, 624, 625, 626, 627, 80, 628, 630, 631, 633, 81, 637, 82, AFCO 43, AFCO 44, 83, 639, 642, 640, 643, CONT 36, 84, 644, 645, 648, CONT 39, 647, CONT 39, 642, 649, 650, 656, 657, 651, 653, 655, 658, 659, 660

Article 14

AM625.

Cooperation within the AML/CFT supervisory system for the purposes of direct supervision

1. Without prejudice to the Authority's power pursuant to Article 20(2), point (g), to receive directly, or have direct access to, information reported, on an ongoing basis, by selected obliged entities, financial supervisors shall provide the Authority with all information necessary for carrying out the tasks conferred on the Authority **in accordance with this Regulation and other applicable Union law**.
 - 1a. **When an obliged entity becomes a selected obliged entity, the Authority and the national competent authority of the obliged entity shall agree on working arrangements to ensure the smooth transition and conduct of their respective supervisory responsibilities.** (AM623, Delbos-Corfield et al.)
2. Where appropriate, financial supervisors shall be responsible for assisting the Authority with the preparation and implementation of any acts relating to the tasks referred to in Article 5(2), point (b), as regards all selected obliged entities, including assistance in verification activities. They shall follow the instructions given by the Authority when performing those tasks.
3. The Authority shall develop implementing technical standards specifying the conditions under which financial supervisors are to assist the Authority pursuant to paragraph 2.
4. The Authority shall submit the draft implementing technical standards to the Commission by 1 January 2025.

The Commission is empowered to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 42.

AM629, 632, 634, 635, 636.

Joint supervisory teams

1. A joint supervisory team shall be established for the supervision of each selected obliged entity. Each joint supervisory team shall be composed of staff from the Authority and from the financial supervisors responsible for supervision of the selected obliged entity at national level. The members of the joint supervisory team shall be appointed in accordance with paragraph 4 and shall work under the coordination of a designated staff member from the Authority ('JST coordinator').
2. The JST coordinator shall **be stationed in the Authority's premises and** (AM629, Marques et al.) ensure the coordination of the work within the joint supervisory team. Joint supervisory team members shall follow the JST coordinator's instructions as regards their tasks in the joint supervisory team. This shall ~~not affect~~ **be without prejudice to** their tasks and duties within their respective financial supervisors. **Unless justified, the JST coordinator shall not be from the Member States where the selected obliged entity is established.** ~~The JST coordinator shall be delegated from the Authority to the financial supervisor in the Member State where a selected obliged entity has its headquarters, upon agreement of the relevant financial supervisors. The duration of the delegation shall be limited to the time period during which the Authority carries out supervisory tasks with respect to the selected obliged entity.~~ (AM629, Marques et al., AM630, Urtasun et al.)
3. The tasks of a joint supervisory team shall include the following:
 - (a) performing the supervisory reviews and assessments for the selected obliged entities;
 - (b) performing and coordinating on-site inspections at selected obliged entities and preparing the reports, including proposals for adoption of supervisory measures following such reports, where necessary;
 - (c) taking into account the reviews, assessments and on-site inspections referred to in points (a) and (b), participating in the preparation of draft decisions applicable to the respective selected obliged entity to be proposed to the General Board and Executive Board;
 - (d) liaising with financial supervisors where necessary for exercises of supervisory tasks in any Member State where a selected obliged entity is established.
4. The Authority shall be responsible for the establishment and the composition of joint supervisory teams. **The Authority and** the respective financial supervisors shall appoint one or more persons from their staff as a member or members of a joint supervisory team. A financial supervisor staff member may be appointed **to** (AM634, Marques et al.) more than one joint supervisory team.
5. The Authority and financial supervisors shall consult each other and agree on the use of staff with regard to the joint supervisory teams.
 - 5a. **The Authority shall develop internal procedures (AM636, Marques et al.) setting out the composition of joint supervisory teams, notably with regard to staff from each financial supervisor in a home/host context, the status of staff from national supervisors,**

the allocation of human resources by the Authority to **participate** in joint supervisory teams, and necessary operational and procedural rules. **The Authority shall ensure that the financial supervisors of the Member States in which the selected obliged entity operates are adequately represented in the JST and that the JST is composed of staff having a sufficient level and diversity of knowledge, background, expertise and experience.** (AM632, Delbos-Corfield et al.; AM635, Hansen et al.)

Article 16

AM638, 641.

Request for information

1. The Authority may require selected obliged entities, legal persons belonging to them, **and, if necessary, natural persons, including their employees, as well as** third parties to whom the selected obliged entities have outsourced operational functions or activities and natural or legal persons affiliated to them, to provide all information that is necessary in order to carry out the tasks conferred on it by this Regulation **and other applicable Union law.** (AM638, Pereira)
2. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply the information requested **in a timely manner** (AM641, Marques et al.). Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

The addressees of a request made pursuant to paragraph 1 shall provide the Authority without undue delay with clear, accurate and complete information.
3. Where the Authority obtains information directly from the natural or legal persons referred to in paragraph 1, it shall make that information available to the financial supervisor concerned.

Article 17

AM646.

General investigations

1. In order to carry out the tasks conferred on it by this Regulation, the Authority may conduct all necessary investigations of any selected obliged entity or any natural or legal person employed by or belonging to a selected obliged entity and established or located in a Member State.

To that end, the Authority may:

 - (a) require the submission of documents;
 - (b) examine the books and records of the persons and take copies or extracts from the books and records;
 - (c) obtain access to internal audit reports, certification of accounts and any software, databases, IT tools or other electronic means of recording information;

- (ca) **obtain access to documents and information relating to decision-making processes, including those developed by algorithms or other digital processes;** (AM646, Marques et al.)
 - (d) obtain written or oral explanations from any person referred to in Article 16 or their representatives or staff;
 - (e) interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject-matter of an investigation.
2. The persons referred to in Article 16 shall be subject to investigations launched on the basis of a decision of the Authority. When a person obstructs the conduct of the investigation, the financial supervisor of the Member State where the relevant premises are located shall provide, in compliance with national law, the necessary assistance, including facilitating the access by the Authority to the business premises of the legal persons referred to in Article 16, so that the rights listed in paragraph 1 of this Article can be exercised.

Article 18

On-site inspections

1. In order to carry out the tasks conferred on it by this Regulation, the Authority may, subject to prior notification to the financial supervisor concerned, conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 16. Where the proper conduct and efficiency of the inspection so require, the Authority may carry out the on-site inspection without prior announcement to those legal persons.
2. The staff of the Authority and other persons authorised by the Authority to conduct an on-site inspection may enter any business premises and land of the legal persons subject to a decision on investigation adopted by the Authority and shall have all the powers provided in Article 20.
3. The legal persons referred to in Article 16 shall be subject to on-site inspections on the basis of a decision of the Authority.
4. Staff and other accompanying persons authorised or appointed by the financial supervisor of the Member State where the inspection is to be conducted shall, under the supervision and coordination of the Authority, actively assist the officials of and other persons authorised by the Authority. To that end, they shall enjoy the powers set out in paragraph 2. Staff of financial supervisors of the Member State concerned shall also have the right to participate in the on-site inspections.
5. Where the staff of and other accompanying persons authorised or appointed by the Authority find that a person opposes an on-site inspection ordered pursuant to this Article, the financial supervisor of the Member State concerned shall provide the necessary assistance in accordance with national law. To the extent necessary for the inspection, this assistance shall include the sealing of any business premises and books or records. Where that power is not available to the financial supervisor concerned, it shall use its powers to request the necessary assistance of other national authorities.

Article 19

Authorisation by a judicial authority

1. If an on-site inspection provided for in Article 18 requires authorisation by a judicial authority in accordance with national law, the Authority shall apply for such an authorisation.
2. Where an authorisation as referred to in paragraph 1 is applied for, the national judicial authority shall control that the decision of the Authority is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the Authority for detailed explanations, in particular relating to the grounds the Authority has for suspecting that an infringement of the acts referred to in Article 1(2), first subparagraph has taken place, the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the inspection or demand to be provided with the information on the Authority's file. The lawfulness of the Authority's decision shall be subject to review only by the Court of Justice of the European Union.

RECITALS

- (22) To ensure that the Authority can fulfil its supervisory obligations in an efficient manner with regard to selected obliged entities, the Authority should be able to obtain any internal documents and information necessary for the exercise of its tasks and for that purpose have general investigation powers afforded to all supervisory authorities under national administrative law.
- (23) The Authority should have the power to require actions, internal to the entity, to enhance the compliance of obliged entities with the AML/CFT framework, including reinforcement of internal procedures and changes in the governance structure, going as far as removal of members of the management body, without prejudice to the powers of other relevant supervisory authorities of the same selected entity. Following relevant findings related to non-compliance or partial compliance with applicable requirements by the obliged entity, it should be able to impose specific measures or procedures for particular clients or categories of clients who pose high risks. On-site inspections should be a regular feature of such supervision. If a specific type of on-site inspection requires an authorisation by the national judicial authority, such authorisation should be applied for by the Authority.

COMP G – Supervisory powers, sanctions.

AMs covered: 663, 664, 665, 666, 667, 668, 670, 673, 674, 675, 676, 678, 680, 257

AMs falling: 661, 662, 85, 86, 87, 671, 672, 88, 89, 90, 677, 91, 679, 681, 682, 683, 684, 685, 686, 687, 688, 689, 693, 692, 690, 696, 695, 694, 699, 698, 697, 700, 701, 702, 703, 18, 19, 257, 258, 259, 92

Article 20

AM663, 664, 665, 666, 667, 668, 670, 673, 674, 675, 676.

Supervisory powers

1. For the purpose of carrying out its tasks referred to in Article 5(2), the Authority shall have the powers set out in paragraph 2 of this Article to require any selected obliged entity to take the necessary measures where:
 - (a) the selected obliged entity does not meet the requirements of Union acts and national legislation referred to in Article 1(2);
 - (b) the Authority has evidence that the selected obliged entity is likely to breach the requirements of Union acts and national legislation referred to Article 1(2) within a **reasonable timeframe**; (AM663, Strugariu et al.);
 - (c) the arrangements, strategies, processes and mechanisms implemented by the selected obliged entity do not ensure, based on a **duly justified** (AM665, Pereira; AM666, Beck) determination by the Authority, a sound management and coverage of its **ML/TF (AM664, Benjumea; AM667, Daly; AM668, Seekatz et al.)** risks.
2. For the purposes of Article 6(1) the Authority shall have, in particular, the following powers:
 - (a) to require the reinforcement of the arrangements, processes, mechanisms and strategies;
 - (aa) **to issue recommendations**;
 - (b) to require a plan to restore **and ensure** compliance with supervisory requirements pursuant to Union acts and national legislation referred to in Article 1(2) and to set a deadline for its implementation, including improvements to that plan regarding its scope and deadline;
 - (c) to require to apply a specific policy or treatment of clients, transactions, or delivery channels;
 - (d) to restrict or limit the business, operations or network of institutions comprising the selected obliged entity, or to require the divestment of activities that pose **evident or** (AM670, Benjumea) excessive money laundering and terrorism financing risks;

- (e) to require the implementation of measures to bring about the reduction of the money laundering and terrorism financing risks in the activities, products and systems of selected obliged entities;
- (f) to require changes in the governance structure;
- (g) to require the provision of any data or information necessary for the fulfilment of tasks listed in Article 5(2), to require submission of any document, or impose additional or more frequent reporting requirements;
- (h) to impose specific requirements relating to individual clients, transactions or activities that pose high risks;
- (ha) to order the natural or legal person to cease the conduct and to refrain from repeating that conduct;
- (hb) to issue a public statement which identifies the natural or legal person and the nature of the breach in accordance with Article 24;**
- (i) where a selected entity is subject to authorisation, to **recommend** (AM674, Delbos-Corfield et al.) the withdrawal **or suspension** of licence of **the** selected obliged entity to the authority that has granted such **licence** or to **withdraw** the authorisation where it has been granted. The authority that has granted such authorisation shall make every effort to comply with the suspension or the withdrawal **recommended** by the Authority. In the event that an authority does not comply or does not intend to comply, it shall inform the Authority, stating its reasons; (AM673, Marques et al.)
- (ia) **to impose a temporary ban on any person performing managerial duties in a selected obliged entity, or any other natural person, held responsible for the breach, from performing managerial duties in the selected obliged entities. (AM675, Strugariu et al.; AM676, Castaldo et al.)**

3. The Authority shall also have the powers and obligations which supervisory authorities have under the relevant Union law, unless otherwise provided for by this Regulation. To the extent necessary to carry out the tasks conferred on it by this Regulation, the Authority may require, by way of instructions, those supervisory authorities to make use of their powers, under and in accordance with the conditions set out in national law, where this Regulation does not confer such powers on the Authority, in particular where such powers stem from Article 41(1) (a) to (f), (2) and (3) [OP please insert the next number to the AMLD, COM(2021)423]. Those supervisory authorities shall fully inform the Authority about the exercise of those powers.

The Authority shall be granted access to the information available in the registers, data retrieval systems and mechanisms referred to in Chapter II of [please insert reference to AMLD] for the purpose of carrying out the supervisory tasks conferred on it by this Regulation.^{3a.} The administrative measures referred to in paragraph 1 shall be accompanied by a binding deadline for their effective implementation. The Authority shall follow up and assess the effective implementation by the selected obliged entity of the actions requested.

Article 21

AM678, 680.

Administrative pecuniary sanctions

1. For the purpose of carrying out the tasks conferred on it by this Regulation, where a selected obliged entity intentionally **or** negligently **commits a serious, repeated or systematic** (AM678, Benjumea) breach of a requirement listed in Annex II under directly applicable acts of Union law referred to in Article 1(2), or does not comply with a binding decision referred to in Article 6(1), the Authority may impose administrative pecuniary sanctions, under the conditions specified in paragraphs 2 to 7 of this Article.
2. Where the Executive Board of the Authority finds that a selected obliged entity has, intentionally or negligently, committed a **serious, repeated or systematic** breach of directly applicable requirements contained in [OP please insert the next number to the AMLR, COM (2021)420] or [OP please insert the next number to the TFR, COM(2021)422], it shall adopt a decision imposing administrative pecuniary sanctions, in accordance with paragraph 3. Administrative pecuniary sanctions shall, depending on the circumstances of each individual case, be imposed in addition to, or instead of, the **measures** (AM680, Daly) referred to in Article 20(2).
3. The basic amount of the administrative pecuniary sanctions referred to in paragraph 1 shall be included within the following limits:
 - (a) for **serious, repeated or systematic** breaches of one or more requirements related to customer due diligence, group policies and procedures and/or reporting obligations that have been identified in two or more Member States where a selected obliged entity operates, the sanction shall amount to at least EUR 1 000 000 and shall not exceed EUR 2 000 000 or 1% of the annual turnover, whichever is higher;
 - (b) for **serious, repeated or systematic** breaches of one or more requirements related to customer due diligence, internal policies, controls and procedures and/or reporting obligations that have been identified one Member State where a selected obliged entity operates, the sanction shall amount to at least EUR 500 000 and shall not exceed EUR 1 000 000 or 0,5% of the annual turnover, whichever is higher;
 - (c) for **serious, repeated or systematic** breaches of all other requirements that have been identified in two or more Member States where a selected obliged entity operates, the sanction shall amount to at least EUR 1 000 000 and shall not exceed EUR 2 000 000;
 - (d) for **serious, repeated or systematic** breaches of all other requirements that have been identified in one Member State the sanction shall amount to at least EUR 500 000 and shall not exceed EUR 1 000 000;
 - (e) for **serious, repeated or systematic** breaches of the decisions of the Authority referred to in Article 6(1), the sanction shall amount to at least EUR 100 000 and shall not exceed EUR 1 000 000.

4. The basic amounts defined within the limits set out in paragraph 3 shall be adjusted, where needed, by taking into account aggravating or mitigating factors in accordance with the relevant coefficients set out in Annex I. The relevant aggravating coefficients shall be applied one by one to the basic amount. If more than one aggravating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual aggravating coefficient shall be added to the basic amount. Where the benefit derived from the breach by the natural or legal person held responsible or the losses to third parties caused by the breach can be determined, they shall be added to the total amount of the sanction, after application of the coefficients.
5. The relevant mitigating coefficients shall be applied one by one to the basic amount. If more than one mitigating coefficients is applicable, the difference between the basic amount and the amount resulting from the application of each individual mitigating coefficient shall be subtracted from the basic amount.
6. The maximum amount of a sanction for **serious, repeated or systematic** breaches referred to in paragraph 2, points (a) and (b) shall not exceed 10 % of the total annual turnover of the obliged entity in the preceding business year, after application of the coefficients referred to in paragraphs 4 and 5.
7. The maximum amount of a sanction for **serious, repeated or systematic** breaches referred to in paragraph 2, points (c) and point (d) shall not exceed EUR 10 000 000 or, in the Member States whose currency is not the Euro, the corresponding value in the national currency, after application of the coefficients referred to in paragraphs 4 and 5.
8. Where the selected obliged entity is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Article 22 of Directive 2013/34/EU of the European Parliament and the Council⁸, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with applicable accounting standards according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.
9. In the cases not covered by paragraph 1 of this Article, where necessary for the purpose of carrying out the tasks conferred on it by this Regulation, the Authority may require financial supervisors to open proceedings with a view to taking action in order to ensure that appropriate administrative pecuniary sanctions are imposed in accordance with the legislative acts referred to in Article 1(2) and any relevant national legislation which confers specific powers which are currently not required by Union law. The sanctions applied by financial supervisors shall be effective, proportionate and dissuasive.

The first subparagraph shall be applicable to administrative pecuniary sanctions to be imposed on selected obliged entities for breaches of national law transposing [OP please insert the next number to the AMLD, COM(2021)423] and to any administrative pecuniary sanctions to be imposed on members of the management

⁸ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

board of selected obliged entities who under national law are responsible for a breach by an obliged entity.

10. The administrative pecuniary sanctions applied shall be effective, proportionate and dissuasive.

Article 22

AM703, 704.

Periodic penalty payments

1. The Executive Board shall by decision impose a periodic penalty payment in order to compel:
 - (a) a selected obliged entity to put an end to a breach, in accordance with a decision taken pursuant to Article 6(1);
 - (b) a person referred to in Article 16(1) to supply complete information which has been required by a decision pursuant to Article 6(1);
 - (c) a person referred to in Article 16(1) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched pursuant to Article 17.
2. The periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed on a daily basis until the selected obliged entity or person concerned complies with the relevant decision referred to in paragraph 1.
3. Notwithstanding paragraph 2, the amount of a periodic penalty payment shall be 3 % of the average daily turnover in the preceding business year or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date set in the decision imposing the periodic penalty payment.
4. **Six months after the notification of the Authority's decision to impose a periodic penalty payment, the Executive Board shall review the periodic penalty payment and decide whether it should be extended once.** (AM703, Delbos-Corfield et al.; AM704, Daly)

Article 22a

Methodology for assessing breaches and imposing sanctions and other administrative measures

1. When determining the type and level of administrative sanctions or measures, the Authority shall take into account all relevant circumstances, including where applicable:
 - (a) the gravity and the duration of the breach;
 - (b) the degree of responsibility of the natural or legal person held responsible;

- (c) the financial strength of the natural or legal person held responsible, including in light of its total turnover or annual income;
 - (d) the benefit derived from the breach by the natural or legal person held responsible, insofar as it can be determined;
 - (e) the losses to third parties caused by the breach, insofar as they can be determined;
 - (f) the level of cooperation of the natural or legal person held responsible with the competent authority;
 - (g) previous breaches by the natural or legal person held responsible;
 - (ga) repeated similar breaches by the natural or legal person held responsible.**
2. By ... [2 years after the date of entry into force of this Regulation], the Authority shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall define indicators to classify the level of gravity of breaches and criteria to be taken into account when setting the level of administrative sanctions or taking administrative measures pursuant to this Section **and the consequences in the event of repeated breaches. Those draft regulatory technical standards shall also include ranges of pecuniary sanctions relative to the turnover of the entity in breach that shall be applied in accordance with the indicators to classify the level of gravity of the breach as references for effective, proportionate and dissuasive sanctions, including in cases of repeated breaches.**
3. The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in paragraph 2 of this Article in accordance with Articles 38 to 41.

RECITALS

- (24) The Authority should have a full range of supervisory powers in relation to directly supervised entities in order to ensure compliance with applicable requirements. These powers should apply in cases where the selected entity does not meet its requirements, in cases where certain requirements are not likely to be met, as well as in cases where internal ~~process~~ **processes** and controls are not appropriate to ensure sound management of selected obliged entity's ML/FT risks. The exercise of these powers could be done by means of binding decisions addressed to selected individual obliged entities, **as well as by means of recommendations.**
- (25) In addition to supervisory powers and in order to ensure compliance, in cases of **serious, repeated or systematic** breaches of directly applicable requirements, the Authority should be able to impose administrative pecuniary sanctions **and other measures** on the selected obliged entities. **Those measures should be defined in regulatory technical standards by means of indicators to classify the level of gravity of the breaches and the criteria to be taken into account when setting the level of administrative pecuniary sanctions and other measures. (AM257, Pereira)** Such sanctions should be proportionate and dissuasive, should have both punitive and deterrent effect, and should comply with the principle of *ne bis in idem*. The maximum amounts of pecuniary sanctions should be in line with those established by [please insert reference – 6th Anti-Money Laundering Directive] and available to all supervisory authorities across the Union. The basic amounts of these sanctions should be determined within the limits established by

the AML/CFT framework, taking into account the nature of the requirements that have been breached. In order for the Authority to take aggravating or mitigating factors adequately into account, adjustments to the relevant basic amount should be possible. With the objective to achieve a timely change of the damaging business practice, the Executive Board of the Authority should be empowered to impose periodic penalty payments to compel the relevant legal or natural person to cease the relevant conduct. With the aim to heighten awareness of all obliged entities, by encouraging them to adopt business practices in line with the AML/CFT framework, the sanctions and penalties should be disclosed. The Court of Justice should have jurisdiction to review the legality of decisions adopted by the Authority, the Council and the Commission, in accordance with Article 263 TFEU, as well as for determining their non-contractual liability.

- (26) In order for the Authority and financial supervisors to communicate swiftly and efficiently within AML/CFT supervisory system and to enable more coherent decision-making processes, it is necessary to have specific arrangements for communication within that system.

COMP H – Hearings, disclosures, procedural rules, and judicial review.

AMs covered: 706, 707, 708, 710, 711, 712, 713, 714, 715, 716

AMs falling: 705, 93, 707, 711, 94, 709, 712, 95, AFCO 45, CONT 40, 717, AFCO 46, 718

Article 23

AM706.

Hearing of persons subject to proceedings

1. Before taking any decision imposing an administrative pecuniary sanction or periodic penalty payment under Articles 21 and 22, the Executive Board shall give the persons subject to the proceedings the opportunity to be heard on Authority's findings. The Executive Board shall base its decisions only on findings on which the persons subject to the proceedings have had the opportunity to comment.
2. The rights of defence of the persons subject to the proceedings shall be fully respected during the proceedings. They shall be entitled to have access to the Authority's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or internal preparatory documents of the Authority.

Article 24

AM707, 708, 710, 711, 712.

Disclosure, nature, enforcement and allocation of administrative pecuniary sanctions and periodic penalty payments

1. The Authority shall disclose to the public every administrative pecuniary sanction and periodic penalty payment that has been imposed on a selected obliged entity pursuant to Articles 21 and 22, **as well as the administrative measures that have been imposed on a selected obliged entity pursuant to Article 20(2), point d)**, ~~unless such disclosure to the public would cause disproportionate damage to the parties involved.~~ **after the person sanctioned is informed of that decision and all administrative internal procedures have been exhausted. The publication shall include at least information on the type and nature of the breach and the identity of the selected obliged entities responsible.** (AM707, Daly; AM708, Delbos-Corfield; AM710, Tardino; AM711, Strugariu et al.)

The disclosed information shall at least be available on the website of the Authority.
- 1a. **The Authority shall transmit without delay, on a confidential basis, to at least the European Parliament, the Council and the Commission, all relevant information on administrative measures that have been imposed on a selected obliged entity**

pursuant to Article 20. The shared information shall include at least the type and nature of the breach and the identity of the selected obliged entities responsible.

(AM712, Strugariu et al.)

2. Administrative pecuniary sanctions and periodic penalty payments imposed pursuant to Articles 21 and 22 shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision without other formality than verification of the authenticity of the decision by the authority which the government of each Member State shall designate for that purpose and shall make known to the Authority and to the Court of Justice of the European Union.

When those formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with national law, by bringing the matter directly before the competent body.

Enforcement may be suspended only by a decision of the Court of Justice of the European Union. However, the courts of the Member State concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

3. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

Article 25

AM713, 714, 715, 716.

Procedural rules for taking supervisory measures and imposing administrative pecuniary sanctions

1. Where, in carrying out its duties under this Regulation, the Authority finds that there are serious indications of the possible existence of facts liable to constitute one or more of the breaches listed in Annex II, the Authority shall appoint an independent investigatory team within the Authority to investigate the matter.

The investigatory team shall not be involved or have been involved in the direct supervision of the selected obliged entity concerned and shall perform their functions independently from the Authority's Executive Board. **The Authority shall develop internal procedures to determine the rules governing the selection of the members of the independent investigatory teams, in particular with regards to the qualifications, expert knowledge, professional experience and guarantee of independence** (AM713, Urtasun et al.) **expected of them.**

2. The investigatory team shall investigate the alleged breaches, taking into account any comments submitted by the persons subject to investigation, and shall submit a complete file with their findings to the Authority's Executive Board.

In order to carry out their tasks, the investigatory team may exercise the power to require information in accordance with Article 16 and to conduct investigations and on-site inspections in accordance with Articles 17 and 18.

Where carrying out their tasks, the investigatory team shall have access to all documents and information gathered by the joint supervisory team in its supervisory activities.

3. Upon completion of their investigation and before submitting the file with their findings to Authority's Executive Board, the investigatory team shall give the persons subject to investigation the opportunity to be heard on the matters being investigated. The investigatory team shall base their findings only on facts on which the persons subject to investigation have had the opportunity to comment.

The rights of defence of the persons concerned shall be fully respected during investigations under this Article.

4. When submitting the file with their findings to the Authority's Executive Board, the investigatory team shall notify that fact to the persons subject to investigation. The persons subject to investigation shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.

5. On the basis of the file containing the investigatory team's findings and, when requested by the persons concerned, after having heard the persons subject to investigation in accordance with Article 23 (AM714, Delbos-Corfield et al.), the Executive Board shall decide if one or more of the breaches listed in Annex II have been committed by the persons who have been subject to investigation, and in such case, shall take a supervisory measure in accordance with Article 20 and impose an administrative pecuniary sanction in accordance with Article 21.

6. The investigatory team shall not participate in the deliberations of the Executive Board or in any other way intervene in the decision-making process of the Executive Board.

7. The Commission shall adopt further rules of procedure for the exercise of the power to impose administrative pecuniary sanctions or periodic penalty payments, including provisions on rights of defence, temporal provisions, and the collection of administrative pecuniary sanctions or periodic penalty payments, and shall adopt detailed rules on the limitation periods for the imposition and enforcement of penalties.

The rules referred to in the first subparagraph shall be adopted by means of delegated acts in accordance with Article 85.

8. The Authority shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. **The information communicated to the relevant national authorities shall also be transmitted to Europol in cases where two or more Member States are involved in the facts liable to constitute criminal offences. The Authority shall also transmit the information to the European Public Prosecutor's Office where such information concerns offences in respect of which the European Public Prosecutor's Office exercises or is permitted to exercise competence in accordance with Council Regulation (EU) 2017/1939. (AM715, Castaldo et al.; AM716, Strugariu et al.)** In addition, the Authority shall refrain from imposing administrative pecuniary sanctions or periodic penalty payments where a prior acquittal or conviction arising from identical facts, or from facts which are substantially the same, has acquired the force of res judicata as the result of criminal proceedings under national law.

Article 26

Review by the Court of Justice of the European Union

The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions of the Authority imposing an administrative pecuniary sanction or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Article 27

Language arrangements in direct supervision

1. The Authority and the financial supervisors shall adopt arrangements for their communication within the AML/CFT supervisory system, including the language(s) to be used.
2. Any document which a selected obliged entity or any other natural or legal person individually subject to the Authority's supervisory procedures submits to the Authority may be drafted in any of the official languages of the Union, chosen by the selected obliged entity or natural or legal person concerned.
3. The Authority, selected obliged entities and any other legal or natural person individually subject to the Authority's supervisory procedures may agree to exclusively use one of the official languages of the Union in their written communication, including with regard to the Authority's supervisory decisions.
4. The revocation of such agreement on the use of one language shall only affect the aspects of the Authority's supervisory procedure which have not yet been carried out.
5. Where participants in an oral hearing request to be heard in an official language of the Union other than the language of the Authority's supervisory procedure, sufficient advance notice of this requirement shall be given to the Authority so that it can make the necessary arrangements.