

**DRAFT COMPROMISE AMENDMENTS**

**22/03/2023**

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**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**  
(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<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

[Recitals to be discussed after the articles]

HAVE ADOPTED THIS DIRECTIVE:

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C , , p. .

# **COMP A – subject matter, scope, national measures in exposed sectors (Articles 1-6, Recitals 1-9)**

## **Articles 1-6**

**AMs Covered:** 62 (Rapporteurs), 71 (rapporteurs), 341 (Peter-Hansen and others), 342 (Peter-Hansen and others), 344 (Garicano and others), 345 (Garicano and others), 63 (rapporteurs), 347 (Peter-Hansen and others), 64 (rapporteurs), 65 (Rapporteurs), 359 (Peter-Hansen and other), 360 (Regner), 66 (Rapporteurs), 67 (rapporteurs), 364 (Seekatz and other), 365 (Peter-Hansen and other), 366 (Regner), 368 (Garicano and other), 369 (Peter-Hansen and other), 370 (Regner), 68 (Rapporteurs), 373 (Regner), 374 (Peter-Hansen and other), 375 (Zile and other), 69 (Rapporteurs), 376 (Peter-Hansen and other), 70 (Rapporteurs), 377 (Peter-Hansen and other), 71 (Rapporteurs), 72 (Rapporteurs), 381 (Peter-Hansen and other), 73 (Rapporteurs), 74 (Rapporteurs), 384 (Peter-Hansen and other), 75 (Rapporteurs), 383 (Seekatz and other), 385 (Peter-Hansen and other), 76 (Rapporteurs), 378 (Seekatz and others), 379 (Peter-Hansen and others), 380 (Ferber), 386 (Peter-Hansen and other)

**Fall:** 343 (Regner), 346 (cross-group), 348 (Schirdewan), 349 (Schirdewan), 350 (Ressler), 351 (Peter-Hansen and other), 352 (Garraud and other), 353 (Garraud and other), 354 (Zile and others), 355 (Beck), 356 (Rookmaker), 357 (Peter-Hansen and other), 358 (Peter-Hansen and other), 361 (Regner), 362 (Radev), 363 (Garicano and others), 371 (Beck), 372 (Garraud and other), 367 (cross-group), 382 (Pereira)

## **Recitals (1)-(9)**

Covered: 1 (co-rapporteurs), 2 (co-rapporteurs), 3 (co-rapporteurs), 226 (Zile & other), 230 (Pereira), 233 (Pereira), 235 (Peter-Hansen & other)

Fall : 227 (Garraud & others), 228 (Peter-Hansen & other), 229 (Garraud & others), 231 (Rookmaker), 232 (Beck), 234 (Peter-Hansen),

## **CHAPTER I GENERAL PROVISIONS**

### **Section 1**

**Subject matter, scope and definitions**

### *Article 1*

### *Subject matter*

This Directive lays down rules concerning:

- (a) measures applicable to sectors exposed to money laundering and terrorist financing at **Union and** national level (AM 341);
- (b) the identification of money laundering and terrorist financing risks at Union and Member States level;
- (c) ~~the set-up and access to~~ **information on** beneficial ownership, bank accounts ~~and, land or real estate registers; and relevant high-value goods and assets~~ (AM 62, 342, 343, 344);
- (d) the responsibilities and tasks of Financial Intelligence Units (FIUs);
- (e) the responsibilities and tasks of bodies involved in the supervision of obliged entities;
- (f) cooperation between competent authorities and cooperation with authorities covered by other Union acts.

## *Article 2*

### *Definitions*

For the purposes of this Directive, the definitions set out in Article 2 of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* apply.

The following definitions also apply:

- (1) ‘financial supervisor’ means a supervisor in charge of credit and financial institutions;
- (2) ‘obliged entities’ means the natural or legal persons listed in Article 3 of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* that are not exempted in accordance with article 4,5,6 of that Regulation;
- (3) ‘home Member State’ means the Member State where the registered office of the obliged entity is situated or, if the obliged entity has no registered office, the Member State in which its head office is situated;
- (4) ‘host Member State’ means the Member State other than the home Member State in which the obliged entity has a subsidiary or a branch or provides services;
- (5) ‘customs authorities’ means the customs authorities as defined in Article 5(1) of Regulation (EU) 952/2013 of the European Parliament and of the Council<sup>3</sup> and the competent authorities as defined in Article 2(1), point (g), of Regulation (EU) 2018/1672 of the European Parliament and of the Council<sup>4</sup>;
- (6) ‘anti-money laundering/counter-terrorist financing supervisory college’ or ‘AML/CFT supervisory college’ means a permanent structure for cooperation and information sharing for the purposes of supervising a group or an entity operating on a cross-border basis;

<sup>3</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

<sup>4</sup> Regulation (EU) 2018/1672 of the European Parliament and of the Council of 23 October 2018 on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005 (OJ L 284, 12.11.2018, p. 6).

- (7) 'entity operating on a cross-border basis' means an obliged entity having at least one establishment in another Member State or in a third country, *or operating under the freedom to provide services* (AM 345);
- (8) 'establishment' means a branch or any other form of establishment of an obliged entity that operates in a Member State or third country other than the country where its head office is established, or the subsidiary of a parent undertaking established in a country other than the country where that parent undertaking has been established.
- (8a) '*predicate offence*' means a criminal activity as defined in Article 2, point (3), of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] (AM 63, 347).

[placeholder for definitions required for provisions on registers/information sources]

## Section 2

### National measures in sectors exposed to money laundering and terrorist financing

#### Article 3

##### *Identification of exposed sectors at national level*

1. Where the national risk assessment carried out by Member States pursuant to Article 8, ***the received information from FIUs in other Member States or information from AMLA*** identify that, in addition to obliged entities, entities in other sectors are exposed to money laundering and terrorist financing risks, Member States may ~~decide to~~ apply the requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* to those additional entities (AM 64).  
□
2. For the purposes of paragraph 1, Member States shall notify to the Commission their intention to apply of requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* to entities in additional sectors, accompanied by:
  - (a) a justification of the money laundering and terrorist financing risks underpinning such intention;
  - (b) an assessment of the impact that such extension will have on the provision of services within the internal market;
  - (c) the text of the national measures that the Member State intends to ***propose or*** adopt (AM 65).
3. Member States shall suspend the adoption of national measures referred to in paragraph 2, point (c), for 6 months from the date of the notification referred to in paragraph 2.
4. Before the end of the period referred to in paragraph 3, the Commission, having consulted the Authority for anti-money laundering and countering the financing of terrorism established by Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]* (AMLA), shall issue a detailed opinion regarding whether the measure envisaged:
  - (a) is adequate to address the risks identified, in particular as regards whether the risks identified by the Member State concern the internal market;
  - (b) may create obstacles to the free movement of services or capital or to the freedom of establishment of service operators within the internal market which are not proportionate to the money laundering and terrorist financing risks the measure aims to mitigate.The detailed opinion shall also indicate whether the Commission intends to propose action at Union level.
5. Where the Commission does not consider it appropriate to propose action at Union level, the Member State concerned shall, within two months of receiving the detailed opinion referred to in paragraph 4, report to the Commission on the action it proposes to take on that detailed opinion. The Commission shall comment on the action proposed by the Member State.

6. Where the Commission indicates its intention to propose action at Union level, the Member State concerned shall abstain from adopting the national measures referred to in paragraph 2, point (c).
7. Where, on *[please insert the date of entry into force of this Directive]*, Member States have already applied national provisions transposing Directive (EU) 2015/849 to other sectors than obliged entities, they may apply the requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* to those sectors.  
  
By *[6 months after the date of transposition of this Directive]*, Member States shall notify the Commission the sectors identified at national level pursuant to the first subparagraph to which the requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* shall apply, accompanied by a justification of the exposure of those sectors to money laundering and terrorist financing risks. Within 6 months of such notification, the Commission having consulted AMLA, shall issue a detailed opinion covering paragraph 4, points (a) and (b), and indicating whether it intends to propose action at Union level. Where the Commission does not consider it appropriate to propose action at Union level, paragraph 5 shall apply.
8. By *[1 years after the date of transposition of this Directive]* and every year thereafter, the Commission shall publish a consolidated list of the sectors to which Member States have decided to apply the requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* in the *Official Journal of the European Union*.

#### Article 4

##### *Requirements relating to certain ~~service providers~~ **obliged entities** (AM 66, 359, 360)*

1. Member States shall ensure that currency exchange and cheque cashing offices, and trust or company service providers are either licensed or registered.
2. Member States shall ensure that all providers of gambling services are regulated.
- 2a. ***Member States shall ensure that the procedures for licensing currency exchange, cheque cashing offices and trusts or company service providers require applicants to demonstrate a good understanding of the risks of money laundering and terrorism financing in their sector of activity.*** ~~Member States shall ensure that AML/CFT training, provided either by obliged entities or supervisors, is accessible to applicants.~~ ***Member States shall ensure that applicants have access to anti-money laundering and counter-terrorist financing training provided in accordance with uniform and high standards by supervisory authorities, certified service providers or obliged entities that have the knowledge and expertise necessary to carry out their tasks (AM 67, 364, 365, 366).***
- 2b. ***Member States shall ensure that procedures under national law regulating professions ~~under national law~~ for entering regulated professions that are obliged entities as referred to in Article 3, point (3) of [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] require applicants to demonstrate a good understanding of the risks of money laundering and terrorism financing in their sector of activity.***

- 2c. **Member States shall ensure that estate agents as referred to in Article 3 point (3) (d) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] develop or have in place training programmes for professionals ~~at accessible costs~~. Such training programmes may be facilitated or provided by professional associations representing agents and the real estate sector.**

## Article 5

### Contact points

1. Member States may require electronic money issuers as defined in Article 2(3) of Directive 2009/110/EC<sup>5</sup>, payment service providers as defined in Article 4(11) of Directive (EU) 2015/2366 and crypto-assets service providers operating through **an agent, a distributor or any other natural or legal person which acts on their behalf**, located in the host Member State and operating under either the right of establishment or the freedom to provide services, and whose head office is situated in another Member State, to appoint a central contact point in their territory. That central contact point shall ensure, on behalf of the entity operating on a cross-border basis, compliance with AML/CFT rules and shall facilitate supervision by supervisors, including by providing supervisors with documents and information on request (**AM 368, 369, 370**).
2. By *[two years after the date of entry into force of this Directive]*, AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall set out the criteria for determining the circumstances in which the appointment of a central contact point pursuant to paragraph 1 is appropriate, and the functions of the central contact points.
3. The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in paragraph 2 of this Article in accordance with Articles 38 to 41 of Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]*.

## Article 6

### Checks on the senior management and beneficial owners of certain obliged entities

1. Member States shall require supervisors to verify that the members of the senior management in the obliged entities referred to in Article 4 **as well as in the obliged entities referred to in Article 3, points (3)(a), (b), (d), (e) and (h) to (l), of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]**, and the beneficial owners of such entities, act with honesty and integrity. Senior management of such entities ~~should also~~ **shall be of good repute and possess ~~proven knowledge and expertise necessary to carry out their functions~~** (AM

<sup>5</sup> Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).



68, 373, 374, 382). *In the case no management role exist, those requirements are applicable to the person referred to in Article 9(6) of [insert reference to AML Regulation ].*

2. With respect to the obliged entities referred to in Article 3, points (3)(a), (b), (d), (e) and (h) to (l), of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], Member States shall ensure that supervisors take the necessary measures to prevent persons convicted of money laundering, any of its predicate offences or terrorist financing or their associates from being professionally accredited, holding a management function in or being the beneficial owners of those obliged entities.
3. Member States shall ensure that supervisors verify at regular intervals and on a risk-sensitive basis whether the requirements of paragraphs 1 and 2 continue to be met. In particular, they shall verify whether the senior management *is of good repute*, acts with honesty and integrity and possesses *proven* knowledge and expertise necessary to carry out their functions in cases where there are reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof in an obliged entity (AM 69, 376).
4. *Member States shall ensure that* supervisors ~~shall~~ have the power to request the removal of any person convicted of money laundering, any of its predicate offences or terrorist financing from the management role of the obliged entities referred to in paragraphs 1 and 2. Supervisors shall have the power to remove *or suspend* members of the senior management ~~that~~ *where it is deemed that they* are not ~~deemed to act of good repute, have not acted~~ with honesty and integrity *or do not* possess *proven* knowledge and expertise necessary to carry out their functions. *In the case where no management role exists in obliged entities, supervisors shall have the power to take adequate measures where it has been deemed that the requirements laid down in paragraph 1 have not been met.they are not of good repute, have not acted with honesty and integrity or do not possess proven knowledge and expertise necessary to carry out their functions* (AM 377, 70).
- 4a. *Member States shall ensure that supervisors have the power to request the suspension of any person from the management role of an obliged entity as referred to in paragraphs 1 and 2 or, in the case where no management role exists in obliged entities, to take adequate measures, where there are reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or that the risk thereof could increase in connection with that obliged entity* (AM 71, 378, 379, 380);
5. Where the person convicted of money laundering, any of its predicate offences or terrorist financing is the beneficial owner of an obliged entity referred to in paragraph 2, Member States shall ensure that such persons ~~can be~~ *are* disassociated from any obliged entity, including by granting supervisors the power to request the divestment of the holding by the beneficial owner in an obliged entity (AM 72, 381).
6. For the purposes of this Article, Member States shall ensure that, in accordance with their national law, supervisors or any other authority competent at national level for assessing the appropriateness of persons referred to in paragraphs 1 and 2, check *at least* the existence of a relevant conviction in the criminal record of the person concerned. Any exchange of information for those purposes shall be carried out in accordance with Framework Decision 2009/315/JHA and Decision 2009/316/JHA as implemented in national law (AM 73).



- 6a** *Member States shall ensure that decisions taken by supervisors pursuant to this Article are subject to administrative appeal and to an effective judicial remedy (AM 74, 384, 375).*
- 6b** *By ... [2 years after the date of transposition of this Directive], AMLA shall issue guidelines on the elements to be taken into account by supervisors when assessing whether:*
- (a) the senior managers and the beneficial owners of obliged entities referred to in paragraph 1 and 2 act with honesty and integrity;*
  - (b) the senior management of obliged entities as referred to in paragraph 1 and 2 are of good repute and possess proven knowledge and expertise necessary to carry out their functions.*
  - (c) there are reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or that the risk thereof could increase in connection with that obliged entity.*
- When drawing up the guidelines referred to in the first subparagraph of this Paragraph, AMLA shall take into account the specificities of each sector in which the obliged entities operate and of previous guidelines issued jointly by the European Securities and Market Authority and the European Banking Authority on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU of the European Parliament and of the Council<sup>6</sup> (AM 75, 383, 385).*
- 6c** *For the purposes of this Article, Member States shall ensure that supervisors or any other authority competent at national level for assessing the appropriateness of persons as referred to in paragraphs 1 and 2 of this Article consult the AMLA database of sanctions provided for in Article 44(2) (AM 76, 386).*

## **Recitals (1)-(9)**

- (1)** Directive (EU) 2015/849 of the European Parliament and of the Council<sup>3</sup> constitutes the main legal instrument for the prevention of the use of the Union financial system for the purposes of money laundering and terrorist financing. That Directive sets out a comprehensive legal framework, which Directive (EU) 2018/843 of the European Parliament and the Council<sup>4</sup> further strengthened by addressing emerging risks and increasing transparency of beneficial ownership. Notwithstanding its achievements, experience has shown that Directive (EU) 2015/849 should be further improved to adequately mitigate risks and to effectively detect criminal attempts to misuse the Union financial system for criminal purposes **and to further integrity of the internal market**. (AM 226)
- (2)** Since the entry into force of Directive (EU) 2015/849, a number of areas have been identified where amendments would be needed to ensure the necessary resilience and capacity of the Union financial system to prevent money laundering and terrorist financing.

<sup>6</sup> *Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).*

- (3) Significant variations in practices and approaches by competent authorities across the Union, as well as the lack of sufficiently effective arrangements for cross-border cooperation were identified in the implementation of Directive (EU) 2015/849. It is therefore appropriate to define clearer requirements, which should contribute to smooth cooperation across the Union whilst allowing Member States to take into account the specificities of their national systems.
- (4) This new instrument is part of a comprehensive package aiming at strengthening the Union's AML/CFT framework. Together, this instrument, Regulation [*please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final*], Regulation [*please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final*] and Regulation [*please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final*] will form the legal framework governing the AML/CFT requirements to be met by obliged entities and underpinning the Union's AML/CFT institutional framework, including the establishment of an Authority for anti-money laundering and countering the financing of terrorism ('AMLA').
- (5) Money laundering and terrorist financing are frequently carried out in an international context. Measures adopted at Union level, without taking into account international co-ordination and cooperation, would have very limited effect. The measures adopted by the Union in that field should therefore be compatible with, and at least as stringent as, other actions undertaken at international level. Union action should continue to take particular account of the Financial Action Task Force (FATF) Recommendations and instruments of other international bodies active in the fight against money laundering and terrorist financing. With a view to reinforcing the efficacy of the fight against money laundering and terrorist financing, the relevant Union legal acts should, where appropriate, be aligned with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by the FATF in February 2012 (the 'revised FATF Recommendations') and the subsequent amendments to those standards.
- (6) Specific money laundering and terrorist financing threats, risks and vulnerabilities affecting certain economic sectors at national level diminish in distinct manners Member States ability to contribute to the integrity and soundness of the Union financial system. As such, it is appropriate to allow Member States, upon identification of such sectors and specific risks ~~to decide~~ to apply AML/CFT requirements to additional sectors than those covered by Regulation [*please insert reference – proposal for Anti-Money Laundering Regulation*]. With a view to preserving the effectiveness of the internal market and the Union AML/CFT system, the Commission should be able, with the support of AMLA, to assess whether the ~~intended~~ decisions of the Member States to apply AML/CFT requirements to additional sectors are justified. In cases where the best interests of the Union would be achieved at Union level as regards specific sectors, the Commission should inform that Member State that it intends to take action at Union level instead and the Member State should abstain from taking the intended national measures. (AMs 1, 230)
- (6a) *It is essential to ensure that applicants for specific professions which are obliged entities possess a good understanding of money laundering and terrorist financing risks in their sector of activity in view of protecting the Union's financial system. Therefore, Member States should ensure that licensing procedures and entry requirements provided under national law to regulated professions which are obliged entities referred*

*to in Regulation [please insert reference –proposal for Anti-Money Laundering Regulation - COM/2021/420 final] require applicants to demonstrate good understanding of risks of money laundering and terrorism financing in their sector of activity. AML/CFT training, provided either by obliged entities or by supervisors, should be accessible to applicants. (AM 2)*

- (7) In light of ~~the specific~~ anti-money laundering vulnerabilities ~~that have been witnessed in related to~~ the electronic money issuing, the payment services and the crypto-assets service providing industry, it should be possible for Member States to require that those providers established on their territory in forms other than a branch and the head office of which is situated in another Member State appoint a central contact point. Such a central contact point, acting on behalf of the appointing institution, should ensure the establishments' compliance with AML/CFT rules. (AM 233)
- (8) Supervisors should ensure that, with regard to currency exchange offices, cheque cashing offices, trust or company service providers or gambling service providers, the persons who effectively manage the business of such entities *are of good repute*, and the beneficial owners of such entities act with honesty, *good faith* and integrity and possess *proven* knowledge and expertise necessary to carry out their functions. The criteria for determining whether or not a person complies with those requirements should, as a minimum, reflect the need to protect such entities from being misused by their managers or beneficial owners for criminal purposes. *AMLA should issue guidelines for the purposes of fostering a common understanding of the elements which supervisors are to take into account in order to determine whether senior management is of good repute, acts with honesty and integrity and possesses the necessary knowledge and expertise. (AMs 3, 234)*
- (8a) *Member States should ensure that estate agents as referred to in Article 3 point (3) (d) of Regulation [please insert reference –proposal for Anti-Money Laundering Regulation - COM/2021/420 final] develop or have in place training programmes for professionals ~~at accessible costs~~. Such training programmes may be facilitated or provided by professional associations representing agents and the real estate sector. The nature and extent of training should be tailored to the scale and complexity of the business and appropriate to the level of ML/TF risk faced by the obliged entity.*
- (9) For the purposes of assessing the appropriateness of persons holding a management function in, or otherwise controlling, obliged entities, any exchange of information about criminal convictions should be carried out in accordance with Council Framework Decision 2009/315/JHA<sup>5</sup> and Council Decision 2009/316/JHA<sup>6</sup>.

## COMP B – Risk assessment, effectiveness statistics (Articles 7-9, Recitals 10-17)

### Articles 7-9

**AMs Covered:** 77 (Rapporteurs), 388 (Daly), 389 (Schirdewan), 392 (Daly and others), 393 (Daly and others), 394 (Garcia-Margallo), 78 (Rapporteurs), 395 (Peter-Hansen and others), 396 (Garicano and others), 398 (Daly), 399 (Schirdewan), 400 (Strugariu and others), 401 (Schirdewan), 403 (Strugariu and others), 79 (rapporteurs), 402 (Peter-Hansen and others), 404 (Daly), 405 (Daly), 80 (Rapporteurs), 406 (Zile and others), 407 (Ferber), 408 (Garicano and others), 81 (Rapporteurs), 409 (Peter-Hansen and others), 410 (Schirdewan), 411 (Zile and others), 412 (Daly), 82 (Rapporteurs), 413 (Peter-Hansen and others), 414 (Garicano and others), 83 (Rapporteurs), 415 (Peter-Hansen and others), 416 (Garicano and others), 417 (Radev and others), 418 (Ressler and others), 419 (Ferber), 426 (Strugariu and others), 84 (Rapporteurs), 85 (Rapporteurs), AM 419 (Ferber), 420 (Strugariu and others), 421 (Schirdewan), 422 (Castaldo and others), 424 (Peter-Hansen and others), 425 (Peter-Hansen and others), 423 (Daly), 427 (Garicano and others), 428 (Peter-Hansen and others), 429 (Garicano and others), 430 (Peter-Hansen and others), 431 (Schirdewan), 433 (Radev and others), 434 (Garicano and others), 86 (Rapporteurs), 436 (Peter-Hansen and others), 437 (Schirdewan), 438 (Daly), 87 (Rapporteurs), 435 (Daly and others), 439 (Garicano and others), 440 (Pereira), 442 (Peter-Hansen and others), 441 (Schirdewan), 445 (Peter-Hansen and others), 446 (Castaldo and others), 447 (Strugariu and others), 88 (Rapporteurs), 448 (Peter-Hansen), 449 (Schirdewan), 450 (Radev and others), 452 (Strugariu and others), 453 (Schirdewan and others), 454 (Peter-Hansen and others), 455 (Castaldo and others), 456 (Castaldo and others), 457 (Strugariu and others), 458 (Peter-Hansen and others), 89 (Rapporteurs), 90 (Rapporteurs), 460 (Peter-Hansen), 91 (Rapporteurs), 461 (Strugariu and others), 462 (Schirdewan)

**Fall:** 387 (Peter-Hansen and others), 390 (Peter-Hansen and others), 391 (Zanni and others), 397 (Peter-Hansen and others), , 432 (Schirdewan), 443 (Garraud), 444 (Schirdewan), , , 451 (Strugariu and others), 459 (Schirdewan), 463 (Peter-Hansen)

### **Recitals (10)-(17)**

**AMs Covered:** 4 (co-rapporteurs), 5 (co-rapporteurs), 6 (co-rapporteurs), 7 (co-rapporteurs), 8 (co-rapporteurs), 9 (co-rapporteurs), 10 (co-rapporteurs), 237 (Garicano & others), 238 (Pereira), 239 (Radev & alii), 240 (Strugariu & others), 242 (Pereira), , 246 (Garicano & others), 247 (Peter-Hansen & other), 248 (Peter-Hansen & other)

**AMs falling:** 236 (Garraud & others), 241 (Zile & other), 243 (Zile & other), 244 (Garraud & others), 245 (Peter-Hansen & other)

## Section 2

### Risk assessments

#### *Article 7*

#### *Supra-national risk assessment*

1. The Commission shall conduct an assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border activities.  
To that end, the Commission shall, at the latest by [*4 years after the ~~date of transposition~~ entry into force of this Directive*], draw up a report identifying, analysing and evaluating those risks at Union level. Thereafter, the Commission shall update its report every ~~four~~ *three* years. The Commission may update parts of the report more frequently, if appropriate (AM 77, 388, 389).
  
- 1a. The report referred to in Paragraph 1 shall be made public, except for those elements of the report which contain classified information.*
  
2. The report referred to in paragraph 1 shall cover at least the following:
  - (a) the areas and sectors of the internal market that are exposed to money laundering and terrorist financing risks;
  - (b) the nature and level of the risks associated with each area and sector;
  - (c) the most widespread means used to launder illicit proceeds, including, where available, those particularly used in transactions between Member States and third countries, independently of the identification of a third country *or territory* pursuant to Section 2 of Chapter III of Regulation [*please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final*] (AM 394);
  - (ca) assess the risks of money laundering and terrorist financing associated with legal persons and legal arrangements, including the exposure to risks deriving from foreign legal persons and legal arrangements (AM 392, 393);*
  - (d) the risks of non-implementation and evasion of *targeted financial sanctions* (AM 78, 395, 396).
  
3. The Commission shall make recommendations to Member States on the measures suitable for addressing the identified risks *and deficiencies. Member States shall endeavour to follow those recommendations.* In the event that Member States decide not to apply any of the recommendations in their national AML/CFT regimes, they shall notify the Commission thereof and provide a *detailed* justification *stating legitimate reasons* for such a decision. *The Commission's recommendations and the Member States' decisions in response to the recommendations, including the justifications in case of non-application, shall be made public* (AM 398, 399, 400).
  
4. By [*3 years after the date of transposition of this Directive*], AMLA, in accordance with article 44 [*please insert reference to AMLA Regulation*], shall issue an opinion addressed to the Commission on the risks of money laundering and terrorist financing affecting the Union. Thereafter, AMLA shall issue an opinion every two years. *AMLA may issue opinions or updates of its previous opinions more frequently, if appropriate. The opinions issued by AMLA shall be made public, except for those elements of the opinion which contain classified information* (AM 79, 401, 402, 403).



5. In conducting the assessment referred to in paragraph 1, the Commission shall organise the work at Union level, shall take into account the opinions referred to in paragraph 4 and shall involve the Member States' experts in the area of AML/CFT, representatives from national supervisory authorities and FIUs, AMLA and other Union level bodies, *as well as relevant stakeholders*, where appropriate (AM 404, 405).
6. Within 2 years of the adoption of the report referred to in paragraph 1, and every ~~four~~ **three** years thereafter, the Commission shall submit a report to the European Parliament and to the Council on the actions taken based on the findings of that report (AM 80, 406, 407).

## Article 8

### *National risk assessment*

1. Each Member State shall carry out a national risk assessment to identify, assess, understand and mitigate the risks of money laundering and terrorist financing *as well as the risks of non-implementation and evasion of targeted financial sanctions* affecting it. It shall *assess risks on a continuous basis*, keep that risk assessment up to date and review it at least every ~~four~~ **three** years. *Member States may decide to carry out a review of that risk assessment more frequently, if appropriate. In addition, they may carry out ad hoc sectoral risk assessments depending on the level of risk.*

*Based on the identification of country-specific risks and on justified grounds, the Commission may request Member States to review their risk assessment earlier than provided for in the first subparagraph in order to reduce money laundering and terrorist financing risks in the Union. Following a request by the Commission, Member States shall review their risk assessment* (AM 81, 408, 409, 410, 411, 412, 413, 414).

Each Member State shall also take appropriate steps to identify, assess, understand and mitigate the risks of non-implementation and evasion of ~~proliferation financing-related~~ targeted financial sanctions (AM 82).

2. Each Member State shall designate an authority or establish a mechanism to coordinate the national response to the risks referred to in paragraph 1. The identity of that authority or the description of the mechanism shall be notified to the Commission, AMLA, *Europol* and other Member States. *AMLA shall keep a repository of the designated authorities or established mechanisms. If a Member State establishes a mechanism, in particular to coordinate responses at regional or local level, efficient and effective coordination shall be ensured between all the authorities involved* (AM 83, 415, 416, 417).
3. In carrying out the national risk assessments referred to in paragraph 1 of this Article, Member States shall take into account the *methodology used by the Commission for the report referred to in Article 7(1) as well as the results of that report* (AM 418).
4. Each Member State shall use the national risk assessment to:
  - (a) improve its AML/CFT regime, in particular by identifying any areas where obliged entities are to apply enhanced measures *in line with a risk-based*

**approach** and, where appropriate, specifying the measures to be taken (AM 419);

- (b) identify, where appropriate, sectors or areas of lower or greater risk of money laundering and terrorist financing;
- (c) assess the risks of money laundering and terrorist financing associated with each type of legal person and legal arrangement in their territory **taking into account the typical ownership and control structure of different types of legal entities including the number of layers of ownership and the type of legal entity in each layer**, and have an understanding of the exposure to risks deriving from foreign legal persons and legal arrangements, **in particular those which have a multi-layered control structure involving several jurisdictions** (AM 420, 421, 422, 425);
- (ca) **identify patterns of money laundering and terrorist financing and assess trends for the associated risks at national level or crossborder level** (AM 423, 426); (d) decide on the allocation and prioritisation of resources to combat money laundering and terrorist financing as well as non-implementation and evasion of ~~proliferation financing-related~~ targeted financial sanctions (AM 84, 427, 428);
- (e) ensure that appropriate rules are drawn up for each sector or area, in accordance with the risks of money laundering and terrorist financing;
- (f) make appropriate information available promptly to competent authorities and to obliged entities to facilitate the carrying out of their own money laundering and terrorist financing risk assessments as well as the assessment of risks of evasion **of targeted financial sanctions** ~~proliferation financing-related targeted financial sanctions~~ referred to in Article 8 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] (AM 85, 429, 430);
- (fa) **assess the performance of supervisors of obliged entities** (AM 431);
- (fb) **assess the performance of registers and data retrieval systems specified in this Directive and identify weaknesses to be addressed** (AM 424)

In the national risk assessment, Member States shall describe the institutional structure and broad procedures of their AML/CFT regime, including, inter alia, the FIU, tax authorities and prosecutors, **level of European and international cooperation with regard to money laundering and terrorist financing, whistleblower protection mechanisms** as well as the allocated human and financial resources ~~to the extent that this information is available~~ (AM 86, 433, 434, 435, 436, 437). **Member States shall ensure appropriate participation of competent authorities and relevant stakeholders when carrying out the national risk assessment referred to in Paragraph 1** (AM 438).

5. Member States shall make the results of their national risk assessments, including their updates **and reviews**, available to the Commission, to AMLA and to the other Member States. Any Member State may provide relevant additional information, where appropriate, to the Member State carrying out the national risk assessment. A summary of the **results of the** assessment shall be made publicly available, **while respecting high standards of data protection**. That summary shall not contain classified information. The information contained therein shall not **name any natural or legal persons** (AM 87, 439, 440, 441).



- 5a. *The Commission and AMLA shall make recommendations to Member States on the measures suitable for addressing the identified risks. In the event that a Member State decides not to apply any of the recommendations in its national AML/CFT regime, it shall notify the Commission thereof and provide a justification for that decision* (AM 442).

## Article 9

### Statistics

1. Member States shall maintain comprehensive statistics on matters relevant to the effectiveness of their AML/CFT frameworks in order to review the effectiveness of those frameworks.
2. The statistics referred to in paragraph 1 shall include:
  - (a) data measuring the size and importance of the different sectors which fall within the scope of this Directive, including the number of natural persons and entities and the economic importance of each sector;
  - (b) data measuring the reporting, investigation and judicial phases of the national AML/CFT regime, including the number of suspicious transaction reports made to the FIU *and the value of such transactions* (AM 445, 446, 447), the follow-up given to those reports, the information on cross-border physical transfers of cash submitted to the FIU in accordance with Article 9 of Regulation (EU) 2018/1672 together with the follow-up given to the information submitted and, on an annual basis, the number of cases investigated, the number of persons prosecuted, the number of persons convicted for money laundering or terrorist financing offences, the types of predicate offences identified in accordance with Article 2 of Directive (EU) 2018/1673 of the European Parliament and of the Council<sup>7</sup> where such information is available, and the value in euro of property that has been frozen, seized or confiscated;
  - (c) ~~if available,~~ data identifying *the number of suspicious transaction reports disseminated by the FIU to competent authorities*, the number and percentage of reports resulting in further investigation, together with the annual report drawn up by FIUs pursuant to Article 21 (AM 88, 448, 449);
  - (d) data regarding the number of cross-border requests for information that were made, received, refused and partially or fully answered by the FIU, broken down by counterpart country;
  - (e) the number of mutual legal assistance or other international requests for information relating to beneficial ownership and bank account information as referred to in Chapter IV of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] and Sections 1 and 2 of Chapter II of this Directive received from or made to counterparts outside the Union, broken down by competent authority and counterpart country;

<sup>7</sup>

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

- (f) human resources allocated to supervisors as well as human resources allocated to the FIU to fulfil the tasks specified in Article 17;
- (g) the number of on-site and off-site supervisory actions, the number of breaches identified on the basis of supervisory actions and sanctions or administrative measures applied by supervisory authorities and self-regulatory bodies pursuant to Section 4 of Chapter IV;
- (h) the number and type of breaches identified in relation to the obligations of Chapter IV of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* and sanctions or administrative measures applied in relation to those breaches, as well as the number of inspections carried out by the entity in charge of the central register pursuant to Article 10(8) of this Directive;
- (ha) *the number of discrepancies reported to the central register referred to in Article 10, including measures or sanctions imposed by the entity in charge of the central register, the number of on-site and off-site inspections, types of typical discrepancies and patterns identified in the verification process by entities in charge of the central register* (AM 452, 453, 454, 455).

*(hb) the following information regarding the implementation of Article 12:*

*a) the number of requests to access beneficial ownership on the basis of the different categories laid down in Article 12 (2)*

*b) the percentage of requests for access to information which is refused under each category laid down in Article 12 (2)*

*c) the number of persons granted periodical access under the mechanisms referred to in Article 12 (1a)*

*d) the percentage of requests for periodical access under the mechanisms referred to in Article 12 (1a)*

*e) a summary of categories of persons granted access to beneficial ownership information under Article 12(2a), second subparagraph. 12(1) (f).*

~~(hcd)~~ *statistical data referred to in Article 19(3) of Directive (EU) 2019/1153 of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision 2000/642/JHA* (AM 450).

3. Member States shall ensure that the statistics referred to in paragraph 2 are collected and transmitted to the Commission on an annual basis. The statistics referred to in paragraph 2, ~~points (a), (c), (d) and (f)~~, shall also be transmitted to AMLA (AM 457, 456, 458).

AMLA shall store those statistics in its database in accordance with Article 11 of Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]*.

4. By ~~[3 2 years after the date of transposition]~~ **entry into force of this Directive**, AMLA shall adopt an opinion addressed to the Commission on the methodology for the collection of the statistics referred to in paragraph 2, points (a), (c), (d) and (f). (AM 89)
5. **By [2 years and 6 months after the date of entry into force of this Directive],** the Commission ~~is empowered to~~ **shall adopt, by means of** implementing acts ~~laying~~

~~down~~ the methodology for the collection of the statistics referred to in paragraph 2 and the arrangements for their transmission to the Commission and AMLA. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2) (AM 90, 460).

6. *By [1 year after the date of entry into force of this Directive], the Commission shall publish a first report based on statistics provided by Member States pursuant to Article 44 of Directive (EU) 2015/849. By ... [3 years after the date of entry into force of this Directive], the Commission shall publish a report summarising and explaining the statistics referred to in paragraph 2 of this Article, based on the data collected in accordance with this Article. The Commission shall publish thereafter a biennial report summarising and explaining the statistics referred to in paragraph 2, which shall be made publicly available on its website. Those reports shall be submitted to the European Parliament and to the Council* (AM 91, 461, 462).

## Recitals (10)-(17)

- (10) The Commission is well placed to review specific cross-border threats that could affect the internal market and that cannot be identified and effectively combatted by individual Member States. It should therefore be entrusted with the responsibility for coordinating the assessment of risks relating to cross-border activities. Involvement of the relevant experts, such as the Expert Group on Money Laundering and Terrorist Financing and the representatives from the FIUs, as well as, where appropriate, from other Union-level bodies, is essential for the effectiveness of the process of the assessment of risks. National risk assessments *on a continuous basis* and experience are also an important source of information for that process. Such assessment of the cross-border risks by the Commission should not involve the processing of personal data. In any event, data should be fully anonymised. National and Union data protection supervisory authorities should be involved only if the assessment of the risk of money laundering and terrorist financing has an impact on the privacy and data protection of individuals. (AM 4)
- (11) The findings of the risk assessment at Union level can assist competent authorities and obliged entities in the identification, understanding, management and mitigation of the risk of money laundering and terrorist financing, as well as of risks of non-application and evasion of targeted financial sanctions. It is therefore important that the findings of the risk assessment are made public.
- (12) The Member States remain the best placed to identify, assess, understand and decide how to mitigate risks of money laundering and terrorist financing, *as well as how to fight money laundering and terrorism financing* (AM 239) affecting them directly. Therefore, each Member State should take the appropriate steps ~~in an effort~~ to properly *identify*, (AM 237) assess and understand its money laundering and terrorist financing risks *on a continuous basis*, as well as risks of non-implementation and evasion of targeted financial sanctions and to define a coherent national strategy to put in place actions to mitigate those risks. Such national risk assessment should be updated regularly and should include a description of the institutional structure and broad procedures of the Member State's AML/CFT regime, as well as the allocated human and financial resources ~~to the extent that this information is available~~. *National risk assessments should remain up to date and should be reviewed at least every three years. Based on the identification of country-specific risks and for justified grounds, the Commission should be able to request Member States to review their risk assessment earlier in*

*order to reduce money laundering and terrorist financing risks in the Union. Following a request by the Commission, Member States should review their risk assessment and share the results of such a review. (AMs 5, 237, 239, 240)*

- (12a) *Member States should make publicly available a summary of the results of their risk assessment. Such a summary should not contain classified information. The information contained in such a summary should not name any specific natural or legal person. In specific circumstances, Member States might need to refer to prominent money laundering cases, relevant information from leaks or other major suspicions of money laundering or terrorist financing that were widely reported in the media. In such cases it is justified that the identification of certain natural or legal person cannot be avoided or can be inferred from factual situations. (AMs 6, 237, 238)*
- (13) The results of risk assessments should, ~~where appropriate~~, be made available to obliged entities in a timely **and appropriate** manner to enable them to identify, understand, manage and mitigate their own risks. (AM 7)
- (14) In addition, to identify, understand, manage and mitigate risks at Union level to an even greater degree, Member States should make available the results of their risk assessments to each other, to the Commission and to AMLA. ~~When appropriate, a summary of the results of the assessment these results should be made public.~~ **In order to respect privacy and protect personal data, the results of risk assessments should only be made available to the extent that the data provided is the minimum level of data necessary for the carrying out of AML/CFT duties.** (AM 242)
- (15) To be able to review the effectiveness of their systems for combating money laundering and terrorist financing, Member States should maintain, and improve the quality of, relevant statistics. With a view to enhancing the quality and consistency of the statistical data collected at Union level, the Commission and the AMLA should keep track of the Union-wide situation with respect to the fight against money laundering and terrorist financing and should publish regular overviews. ***The Commission should adopt implementing acts laying down the methodology for the collection of statistics and the arrangements for transmission of such statistics to the Commission and AMLA.*** (AM 8)
- (16) The FATF has developed standards for jurisdictions to identify, and assess the risks of potential non-implementation or evasion of the proliferation financing-related ~~the proliferation financing-related~~ targeted financial sanctions, and to take action to mitigate those risks. Those new standards introduced by the FATF do not substitute nor undermine the existing strict requirements for countries to implement targeted financial sanctions to comply with the relevant United Nations Security Council Regulations relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. Those existing obligations, as implemented at Union level by Council Decisions 2010/413/CFSP<sup>7</sup> and (CFSP) 2016/849<sup>8</sup> as well as Council Regulations (EU) 267/2012<sup>9</sup> and (EU) 2017/1509<sup>10</sup>, remain strict rule-based obligations binding on all natural and legal persons within the Union. ***Strict rule-based obligations should equally apply with regard to terrorism and terrorism financing-related sanctions and other targeted financial sanctions adopted by the Union.*** (AMs 9)
- (17) In order to reflect the latest developments at international level, ~~a requirement has~~ **and ensure a comprehensive framework for implementing targeted financial sanctions, multiple requirements have** been introduced by this Directive to **prevent**, identify, understand, manage and mitigate risks of potential non-implementation or evasion of ~~proliferation financing-related~~ targeted financial sanctions at Union level and at Member State level. (AMs 10, 246, 247)

## CHAPTER II

### REGISTERS

## **COMP C – Registers (beneficial ownership, bank, and access rules (Articles 10-15, Recitals 18-43))**

### Articles 10-15

**AMs Covered:** 92 (Rapporteurs), 468 (Peter-Hansen and others), 470 (Garicano and others), 469 (Garicano and others), 473 (Garicano and others), 474 (Peter-Hansen), 93 (Rapporteurs), 479 (Ressler), 480 (Peter-Hansen), 481 (Zanni and others), 482 (Garicano and others), 483 (Strugariu and others), AM 94 (Rapporteurs), 486 (Niedermayer), 487 (Strugariu and others), 488 (Castaldo and others), 489 (Peter-Hansen and others), 490 (Garicano and others), 491 (de Lange and others), 95 (Rapporteurs), 492 (Seekatz), 494 (Peter-Hansen), 96 (Rapporteurs), 497 (Peter-Hansen and others), 498 (Seekatz and others), 496 (Garicano and others), 499 (Tang and Niedermayer), 500 (Peter-Hansen and others), 501 (Strugariu and others), 502 (Ferber), 503 (Daly), 504 (Schirdewan), 505 (Garicano and others) 97 (rapporteurs), 507 (Garicano and others), 508 (Peter-Hansen and others), 506 (Schirdewan), 509 (Garicano and others), 98 (Rapporteurs), 515 (Zanni and others), 516 (Garicano and others), 517 (Daly), 518 (Peter-Hansen and other), 99 (Rapporteurs), 519 (Peter-Hansen and others), 520 (Garicano and others), 521 (Strugariu and others), 522 (Zanni and other), 523 (Ressler), 524 (Schirdewan), 100 (Rapporteurs), 526 (Garicano and others), 527 (Peter-Hansen and others), 101 (Rapporteurs), 528 (Seekatz and others), 529 (Peter-Hansen and others), 530 (Garicano and others), 102 (rapporteurs), 531 (Garicano and others), 532 (Schirdewan), 103 (Rapporteurs), 533 (Strugariu and others), 534 (Peter-Hansen and others), 535 (Daly), 104 (Rapporteurs), 536 (Peter-Hansen and others), 537 (Garicano and others), 105 (Rapporteurs), 538 (Peter-Hansen and others), 539 (Garicano and others), 106 (Rapporteurs), 540 (Peter-Hansen and others), 107 (Rapporteurs), 545 (Peter-Hansen and others), 546 (Schirdewan), 108 (Rapporteurs), 547 (Peter-Hansen and others), 548 (Strugariu and others), 109 (Rapporteurs), 553 (Peter-Hansen and others), 556 (Casa), 557 (Radev and others), 558 (Peter-Hansen and others), 559 (De Lange and others), 560 (Ferber and others), 561 (Peter-Hansen and others), 109 (Rapporteurs), 564 (Peter-Hansen and others), 565 (Daly), 110 (Rapporteurs), 111 (Rapporteurs) , 568 (Daly), 569 (Castaldo and others), 570 (Peter-Hansen and others), 112 (Rapporteurs), 571 (Peter-Hansen and others), 113 (Rapporteurs), 573 (Regner), 574 (Strugariu and others), 575 (Schirdewan), 576 (Peter-Hansen and others), 114 (Rapporteurs), 577 (Daly), 115 (Rapporteurs), 578 (Regner), 579 (Strugariu and others), 580 (Daly), 116 (Rapporteurs), 581 (Peter-Hansen and others), 544 (Karas), 583 (Strugariu and others), 584 (Zile and others), 585-586 (Garicano and others), 587 (Garicano and others) 588 (Peter-Hansen and others), 589 (Schirdewan), 590 (Garicano and others), 591 (Schirdewan), 592 (Schirdewan), 593 (Garicano and others), 594 (Garicano and others), 596 (Garicano and others), 117 (Rapporteurs), 597 (Garicano and others), 118 (Rapporteurs), 599 (Garicano and others), 600 (Peter-Hansen and others), 603 (Radev and others), 608 (Peter-Hansen and others), 119 (Rapporteurs), 604 (Peter-Hansen and others), 605 (Radev and others), 606 (Garicano and others), 120 (Rapporteurs, 612 (Strugariu and others), 613 (Peter-Hansen and others) 615 (Strugariu and others), 616 (Castaldo and others).

**Fall:** 464 (Garicano and others), 465 (Schirdewan), 466 (Peter-Hansen), 467 (Strugariu and others) , 471 (Fitzgerald and others), 472 (Castaldo and others), 475 (Castaldo and others), 476 (Strugariu and others), 477-478 (Daly), 484 (Daly) 485 (Schirdewan), 493 (Daly), 495 (Castaldo and others), 510 (Zanni and others), 511 (Ferber), 512 (Zile and others), 513 (Seekatz



and others), 514 (Seekatz and others), 525 (Daly), , 541 (Garicano and others), 542 (Garicano and others), 543 (Daly), 549 (Ferber), 550 (Daly), 551 (Daly), 552 (Ressler), 554 (Daly), 555 (Seekatz), 562-563 (Daly), 566 (Schirdewan), 567 (Schirdewan), 572 (Castaldo), 582 (Daly), 595 (Radev and others), 598 (Daly), 601 (Daly), 602 (Peter-Hansen and others), 607 (Radev and others), 609 (Schirdewan), 610 (Castaldo and others), 611 (Peter-Hansen and others), 614 (Peter-Hansen and others), 621 (Peter-Hansen and others), 622 (Schirdewan), 617 (Schirdewan), 618 (Castlalo), 619 (Strugariu), 620 (Peter-Hansen and others).

### **Recitals (18)-(43)**

**Covered AMs:** 11 (rapporteurs), 12 (rapporteurs), 13 (rapporteurs), 14 (rapporteurs), 15 (rapporteurs), 248 (Peter-Hansen & other), 253 (Zile & other), 255 (Seekatz & other), 256 (Garicano & other), 258 (Pereira), 260 (Castaldo & others), 261 (Peter-Hansen & other), 263 (Garicano & others), 265 (Garicano & others), 268 (Garicano & others), 22 (rapporteurs), 273 (Peter-Hansen), 274 (Castaldo & others), 275 (Strugariu & others), 23 (rapporteurs), 277 (Peter-Hansen & other), 279 (Strugariu & others), 25 (rapporteurs), 26 (rapporteurs), 281 (Strugariu & others), 282 (Pereira), 285 (Strugariu & others), 27 (rapporteurs), 28 (rapporteurs), 29 (rapporteurs),

**AMs falling:** 249 (Zile & other), 250 (Jaki & other), 251 (Fitzgerald & other), 252 (Garraud & others), 254 (Zile & other), 257 (Ferber), 259 (Fitzgerald & other), 264 (Seekatz & other), 266 (Zile & other), 267 (Zile & other), 270 (Castaldo & others), 271 (Peter-Hansen & other), 276 (Strugariu & others), 280 (Peter-Hansen & other), 286 (Garraud & others), 287 (Peter-Hansen & other), 289 (Garicano & others), 290 (Pereira), 291 (Ferber)

**TBC :** 272 (Strugariu & others), 278 (Strugariu & others), 283 (Strugariu & others), 284 (Strugariu & others), 288 (Peter-Hansen & other), 292 (Strugariu & others), 293 (Strugariu & others),

## Section I

### Beneficial ownership registers

#### *Article 10*

#### *Beneficial ownership registers*

1. Member States shall ensure that beneficial ownership information referred to in Article 44 of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* and information on nominee arrangements referred to in Article 47 of that Regulation is held in a central register in the Member State where the legal entity is incorporated or where the trustee or person holding an equivalent position in a similar legal arrangement is established or resides. Such requirement shall not apply to companies listed on a regulated market that are subject to disclosure requirements equivalent to the requirements laid down in this Directive or subject to equivalent international standards.

***Member States shall also ensure that beneficial ownership information of legal entities incorporated outside the Union or of express trusts or similar legal arrangements administered outside the Union are held in the central register under the conditions laid down in Article 48 of Regulation [(please insert reference - proposal for Anti-money Laundering Regulation - COM/2021/420 final)] (AM 92, 468, 470).***

The beneficial ownership information contained in the central registers *shall be available in machine-readable format and* be collected in accordance with *the implementing acts referred to in Paragraph 4* (AM 469). *Each Member State shall ensure that such beneficial ownership information is made available in the official language or languages of that Member States and in English* (AM 491, 505).

**1a. Member States shall ensure that the information on the current as well as the historical information on past beneficial owners is available in the central register for the period defined in Paragraph 12 of this Article.**

2. Where there are reasons to doubt the accuracy of the beneficial ownership information held by the central registers, Member States shall ensure that *the entity in charge of the central register is empowered to request from corporate and legal entities, the trustees of any express trust and persons holding an equivalent position in a similar legal arrangement, as well as their legal and beneficial owners, any information and documents necessary to identify and verify their beneficial owners, including proofs of existence and ownership*, resolutions of the board of directors and minutes of their meetings, partnership agreements, trust deeds, power of attorney or other contractual agreements and documentation. (AM 473)
3. Where no person is identified as beneficial owner pursuant to Article 45(2) and (3) of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*, the central register shall include:
  - (a) a statement *by the corporate, legal entity or legal arrangement* accompanied by a *legitimate justification and supporting documents*, that there is no beneficial owner or that the beneficial owner(s) could not be identified and verified *pursuant to Articles 42 and 43 of [AML Regulation], and the rules according to which profit or shares are allocated within the corporate or legal entity* (AM 93, 479, 480, 481, 482, 483);
  - (b) the details of the natural person(s) who hold the position of senior managing official(s) in the corporate or legal entity equivalent to the information required under Article 44(1), point (a), of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*.

*Member States shall ensure that the information referred to in the first subparagraph, point (a), is available to FIUs, AMLA, competent authorities, self-regulatory bodies and obliged entities* (AM 479).

4. ~~By ...~~ **[1 year after the entry into force of this Directive]** the Commission is ~~empowered to~~ **shall** adopt, by means of implementing acts, the format for the submission of beneficial ownership information *referred to in article 44 of Regulation [please insert reference - proposal for Anti-Money Laundering Regulation]* to the central register, *including a checklist of minimum requirements for information to be examined by the registrant*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2). (AM 94, 486, 487, 488, 489)
5. Member States shall ~~require~~ **take the necessary measures to ensure** that the beneficial ownership information held in the central registers is adequate, accurate and up-to-date *and shall put in place mechanisms to that effect*. For that purpose, Member States shall apply at least the following requirements: (AM 95, 490, 492, 494)



(-a) *entities in charge of the central registers shall verify, at the time beneficial ownership information is submitted and on a regular basis thereafter, that such information is adequate, accurate and up to date* (AM 96, 497, 498, 499, 523);

(a) obliged entities shall report to the entity in charge of the central registers any discrepancies they find between the beneficial ownership information available in the central registers and the beneficial ownership information available to them pursuant to Article 18 of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation]*, **and shall transmit to the central register the relevant beneficial ownership information they have gathered.** (AM 496)

(b) competent authorities shall report to the entity in charge of the central registers any discrepancies they find between beneficial ownership information available in the central registers and the beneficial ownership information available to them. (AM 501, 502, 503)

**5a** *Member States shall ensure that the entity in charge of the central register verifies whether beneficial ownership information held in the register concerns persons or entities designated in relation to targeted financial sanctions. Such verification shall take place immediately upon the designation in relation to targeted financial sanctions and at regular intervals.* (AM 97, 507, 508). *The entity in charge of the beneficial ownership register shall include a specific mention in the register with regard to the information on the corporate, legal entity or legal arrangement where:*

(a) *a corporate, legal entity or legal arrangement included in the register is subject to targeted financial sanctions;*

(b) *a corporate, legal entity or legal arrangement included in the register is controlled by a person subject to targeted financial sanctions;*

(c) *a beneficial owner of a corporate, legal entity or legal arrangement is subject to targeted financial sanctions;*

*That mention shall remain available to any person or entity granted access under Articles 11 and 12 in the central register until the concerned targeted financial sanctions are removed.* (AM 509)

**5b.** *By ... [4 years after the date of entry into force of this Directive] AMLA shall issue guidelines on the methods and procedures to be employed by entities in charge of the central registers to verify beneficial ownership information and by the obliged entities and competent authorities to identify and report discrepancies regarding beneficial ownership information* (AM 506).

**6.** Member States shall require that the reporting of discrepancies referred to in paragraph 5 takes place within 14 calendar days after detecting the discrepancy. In cases of lower risk to which measures under Section 3 of Chapter III of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation]* apply, Member States may allow obliged entities to request the customer to rectify discrepancies of a technical nature that do not hinder the identification of the beneficial owner(s) directly with the entity in charge of the central registers.

7. Member States shall ensure that the entity in charge of the central registers takes, ***within 30 working days after the reporting of discrepancy***, appropriate actions to cease the discrepancies ***and ensure up-to-date information***, including amending the information included in the central registers where the entity is able to identify and verify the beneficial ownership information. A specific mention of the fact that there are discrepancies reported shall be included in the central registers ***until the discrepancy is resolved and be visible at least to competent authorities and obliged entities to any person or entity granted access under Articles 11 and 12 (AM 98, 515, 516, 517, 518).***
8. In the case of corporate and other legal entities, ***and, where the trustee is an obliged entity as listed in Article 3, point (3)(a), (b) or (c) of Regulation [please insert reference - proposal for Anti-Money Laundering Regulation - COM/2021/420 final], legal arrangements***, Member States shall ensure that the entity in charge of the central beneficial ownership register is empowered to carry out checks, including on-site investigations at the premises or registered office of the legal entity, ***at the premises of relevant obliged entities as listed in Article 3, point (3)(a), (b) or (c), of Regulation [please insert reference - proposal for Anti-Money Laundering Regulation - COM/2021/420 final], in accordance with national law, or at the premises of the legal entities' representatives in the Union*** in order to establish the current beneficial ownership of the entity and to verify that the information submitted to the central register is accurate, adequate and up-to-date. The right of the central register to verify such information shall not be restricted, obstructed or precluded in any manner, ***and the central register shall be empowered to request information from other registers, including in other Member States and third countries, in particular through the establishment of cooperation agreements.*** (AM 99, 519, 520, 521, 522, 523, 524)
- 8a. ***Member States shall ensure that entities in charge of central registers have at their disposal necessary automated technology to carry out verifications as referred to in paragraphs 5, and 5a. Those verifications shall include, in particular, cross-checking beneficial ownership information with other public and private databases to which they have access under national law for the prevention, detection or investigation of money laundering or terrorist financing, checking supporting documents referred to in paragraph 3, detecting errors and inconsistencies, identifying patterns associated with legal entities being used for illicit purposes and carrying out occasional sample testing using a risk based approach. Those verifications shall be carried out in a way that safeguards fundamental rights, such as including human oversight and avoiding discriminatory outcomes*** (AM 100, 500, 504, 526, 527).
- 8b. ***Member States shall ensure that where a verification as referred to in paragraph 8a is carried out at the time of submission of beneficial ownership information, and it leads an entity in charge of a central register to conclude that there are inconsistencies or errors in the beneficial ownership information or that the beneficial ownership information otherwise does not fulfil the requirements laid down in paragraph 5, that entity in charge of a central register is able to withhold and suspend the certification of registration until the beneficial owner information provided is in order*** (AMs 101, 474, 528, 529, 530).
- 8c. ***Member States shall ensure that where a verification as referred to in paragraph 8a is carried out after the submission of beneficial ownership information, and it leads an entity in charge of a central register to conclude that there are inconsistencies or errors in the beneficial ownership information or that the beneficial ownership***

*information otherwise does not fulfil the requirements laid down in paragraph 5, Member States shall ensure that national competent authorities ensure that the legal consequence attached to the registration cannot follow, until the beneficial owner information provided is in order (AMs 102, 531).*

9. Member States shall ensure that the entity in charge of the central register is empowered to impose effective, proportionate and dissuasive measures or sanctions for failures to provide the register with accurate, adequate and up-to-date information about their beneficial ownership. *Sanctions shall include monetary penalties. Member States shall ensure that in the event of repeated failure to provide up-to-date, accurate and adequate information, national competent authorities ensure that appropriate sanctions follow.* In the event of repeated failures to provide up-to-date, accurate and adequate information, sanctions shall be increased to the level necessary to ensure compliance. In such event, the entity in charge of registers shall notify the repeated failures to the ~~competent~~ national authorities competent for imposing appropriate sanctions.

~~The entity in charge of registers could recommend to the competent national authorities to impose additional measures, such as restrictions in the access to certain professions and in the exercise of certain functions within a corporate, legal entity or legal arrangement, restrictions in the establishment of a business relationship with an obliged entities, in the exercise of ownership rights of a corporate and legal entity or in the ability to receive dividends, and suspension or discontinuation of activities [placeholder for LS advice].~~ By ... [2 years after entry into force of this Directive], AMLA shall develop draft regulatory technical standards setting out indicators to classify the level of gravity of breaches and criteria for such repeated failures and submit them to the Commission for adoption. The Commission is empowered to supplement this Directive by adopting those regulatory standards in accordance with Articles 38 to 41 of Regulation [please insert reference - proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]. (AM 103, 532, 533, 534, 535)

10. Member States shall ensure that if, in the course of the checks carried out pursuant to this Article, or in any other way, the entities in charge of the beneficial ownership registers discover facts that could be related to money laundering or to terrorist financing, they shall inform the *competent FIU within 48 hours of discovering such facts* (AMs 104, 536, 537)
- 10a. *Entities in charge of central registers shall be operationally independent and autonomous and shall have the authority and capacity to carry out their functions free of political, government or industry influence or interference. Staff of such entities shall be of high integrity, be appropriately skilled and maintain high professional standards, including standards of confidentiality and data protection and standards addressing conflicts of interest.* (AMs 105, 538, 539)
- 10b. *Member States shall ensure that entities in charge of central registers have in place policies and procedures to ensure that their employees or managers who report breaches of the requirements set out in this Article are legally protected, in accordance with Directive (EU) 2019/1937 of the European Parliament and of the*

*Council<sup>8</sup>, from being exposed to threats, retaliatory or hostile action and, in particular, adverse or discriminatory employment action.* (AMs 106, 540)

11. The central registers shall be interconnected via the European Central Platform established by Article 22(1) of Directive (EU) 2017/1132.
12. The information referred to in paragraph 1 shall be available through the national registers and through the system of interconnection of central beneficial ownership registers for at least five years and no more than 10 years after the corporate or other legal entity has been struck off from the register. *Member States may, without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings, allow or require the retention of such information or documents in concrete cases for a further period of maximum five years where the necessity and proportionality of such further retention have been established for the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing* (AM542).
- 12a. *AMLA shall periodically conduct peer reviews of some or all of the activities of entities in charge of central beneficial ownership registers for the purposes of assessing whether such entities have in place mechanisms to fulfil the requirements set out in this Article and whether such entities carry out checks effectively in order to establish that beneficial ownership information held in the registers is accurate, adequate and up to date* (AMs 107, 545).

#### Article 11

*General rules regarding access to beneficial ownership registers by competent authorities, self-regulatory bodies, ~~and~~ obliged entities and AMLA*

1. Member States shall ensure that competent authorities have timely, unrestricted and free access to the information held in *in the central registers referred to in Article 10, including the interconnected central registers* ~~the interconnected central registers referred to in Article 10~~, without alerting the entity or arrangement concerned (AM 108, 505, 546, 547, 548)
2. Access to the central registers referred to in Article 10 shall be granted to FIUs, AMLA, supervisory authorities, public authorities with designated responsibilities for combating money laundering or terrorist financing, *public procurement agencies* as well as tax authorities and authorities that have the function of investigating or prosecuting money laundering, its predicate offences and terrorist financing, tracing and seizing or freezing and confiscating assets. Self-regulatory bodies shall be granted access to the registers when performing supervisory functions. (AM 553, 547, 548)
3. Member States shall ensure that, when taking customer due diligence measures in accordance with Chapter III of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation]*, obliged entities ~~and agents or external service providers to which tasks are outsourced in accordance with [please add reference to AML Regulation]~~ *and agents or external service providers to which tasks are outsourced in accordance with [please add reference to AML Regulation]* have

<sup>8</sup> *Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).*

timely, *unrestricted and free* access to the information held in the interconnected central registers referred to in Article 10. [...] (AM 109, 556, 557, 559, 560)

*In accordance with Chapter IV of [please insert reference to GDPR], the obliged entity shall remain fully liable for any action of agents or external service providers to which activities are outsourced when those agents or external service providers access the information held in the interconnected central registers referred to in Article 10.*

*The obliged entity shall obtain prior authorisation from the data protection supervisory authority in relation to access to its register by an agent or external service provider for the duration of the outsourcing contract between the obliged entities and the agents or external service providers. Those authorities shall respond in a timely manner, and not later than [2 ] months. If no response is given within this time limit, access is deemed granted.*

*The entity in charge of the central register shall suspend access to the register to obliged entities or agents or external service providers to which tasks are outsourced, in the event of [a risk of a serious failure to comply with the purposes for which access was granted] and [GDPR]. Member States shall ensure that such a suspension can be reviewed by the relevant administrative or judicial authorities.”*

(AM 109, 556, 557, 558, 559, 560)

4. By [3 months after the date of transposition of this Directive], Member States shall notify to the Commission the list of competent authorities and self-regulatory bodies and the categories of obliged entities that were granted access to the registers and the type of information available to obliged entities. Member States shall update such notification when changes to the list of competent authorities or categories of obliged entities . The Commission shall make the information on the access by competent authorities and obliged entities, including any change to it, available to the other Member States *and AMLA* (AM 561).

## Article 12

Specific access rules to beneficial ownership registers for the persons **having** a legitimate interest

1. Member States shall ensure that *any natural or legal person having a legitimate interest in accessing information on beneficial owners* has access, in the central registers referred to in Article 10, including the interconnected central registers, to:

(a) in the case of corporate entities, legal entities or legal arrangements: the name, month and year of birth, the country of residence and nationality of the beneficial owner, the nature and extent of the beneficial interest held, the date they became beneficial owners, historical data of the past beneficial owners, and contact details of the corporate entity, legal entity, express trust or similar legal arrangements, or contact details of the trustee or person holding an equivalent position.



(b) where no beneficial owner has been identified: the justification provided that there is no beneficial owner or that the beneficial owner could not be identified and the name, month and year of birth, country of residence and nationality of the natural person or persons who hold the position of senior managing official or senior managing officials in the corporate or legal entity, as referred to in Article 10(3)(b).

(AM 112, 571, 110, 564, 565, 111, 564, 565, 568, 569, 570)

2. At least persons that belong to any of the following groups shall be considered to have a legitimate interest in accessing the information on beneficial owners as referred to in the first Paragraph:

- a) persons acting for the purpose of journalism, reporting or any other form of expression in the media that are connected with, or that intend to carry out such activities related to, the prevention or combating of money laundering, or its predicate offences or terrorist financing;
- b) civil society organisations that are connected with, or that intend to carry out activities related to, the prevention and combating of money laundering, or its predicate offences or terrorist financing;
- ba) higher education institutions within the meaning of Regulation (EU) 2021/817, that carry out, or that intend to carry out, activities connected with to the prevention and combating of money laundering, or its predicate offences or terrorist financing;
- c) persons who are likely to enter into transactions or business relationships with a corporate entity, legal entity or legal arrangement;
- d) persons who are likely to perform a task or engage in a business relationship that requires them to assess whether a corporate entity, legal entity or legal arrangements, or its beneficial owner is subject to targeted financial sanctions;
- e) financial institutions, external agents and service providers and authorities in so far as they are involved in the prevention or combating of money laundering, or its predicate offences or terrorist financing, and do not already have such access pursuant to Article 11.

2a. Members States shall ensure timely access for natural and legal persons belonging to the categories set out in paragraph 2 to information as referred to in paragraph 1 following the assessment by the authorities in charge of the central registers, such assessment to be done on a case by case basis on the basis of a declaration of honour submitted to those authorities. If no decision on access has been communicated in writing to the person applying for access within 10 days of the submission of the declaration of honour, access shall be considered to have been granted and shall be given automatically.

For any natural or legal person claiming legitimate interest based on grounds other than belonging to one of the categories set out in paragraph 2, access to information as referred to in paragraph 1 shall be granted following the assessment by the authorities in charge of the central registers as to whether the requirement for a legitimate interest is met. This

assessment shall be done on a case by case basis, taking into account the grounds provided in the access request and the supporting documents. Those authorities shall take a decision to grant or refuse access, in a timely manner and in any event within one month of the submission of the access request.

2b. A decision granting access as referred to in paragraph 2a, first subparagraph, including a decision given automatically 10 days after submission of a declaration of honour, shall be valid for a period of at least 2,5 years. Such a decision shall be mutually recognised as proof of having a legitimate interest in all Member States and therefore give access to information as referred to in paragraph 1 for the same period in all Member States.

2c. Member States may decide to automatically renew access or revoke or suspend access to information as referred to in paragraph 1 in case of manifest abuse, or if the grounds for which access was granted no longer exist, regardless of the Member State in which the access was granted. Natural and legal person having been granted access to information as referred to in paragraph 1 shall notify authorities in charge of the central registers of any change affecting their right to access information as referred to in paragraph 1. Such revocation or suspension shall be communicated to the affected person in writing, through the same communication channel as the submission, in a timely manner and no later than 10 days from the decision to revoke or suspend. Member States shall provide for appropriate legal remedies in case of revocation or suspension of access and communicate them to the affected person.

2d. Member States shall provide for effective, dissuasive and proportionate administrative sanctions, in accordance with national law, in case of a false declaration of honour submitted to authorities in charge of the central registers by a person claiming to have a legitimate interest.

2e. The Commission shall adopt implementing acts to issue a common request form and template for the declaration of honour referred to in paragraph 2a with regard to the professional qualifications, professional experience, public activity, membership in any relevant professional association or similar body, or any other valid documentation allowing for the verification that a natural or legal person belong to the categories set out in paragraph 2 as well as proof of identification such as– travel or identity documents, the person identification data within the meaning of Regulation (EU) No 910/2014, or any other valid documentation allowing the identification of the natural person requesting access. Those implementing acts shall be adopted in accordance with Article [Please insert reference].

The Commission shall adopt implementing acts to specify the common format of the decision referred to in paragraph 2a, with a view to ensure mutual recognition of those decisions by the central registers in other Member States as referred to in paragraph 2b. Those implementing acts shall be adopted in accordance with Article [Please insert reference].

2f. The information set out in paragraph 1(a) shall not be used, directly or indirectly, for marketing or commercial purposes, except when those purposes relate directly to the reasons



why a legitimate interest in accessing information on beneficial owners was found to exist. Member States shall make access to that information subject to a signed statement to that effect. (AM 113, 571)

3. Member States may choose to make beneficial ownership information held in their central registers available on the condition of authentication using electronic identification means and relevant trust services as set out in Regulation (EU) 910/2014 of the European Parliament and of the Council and the payment of a fee, which shall not exceed the **direct** costs of making the information available, including costs of maintenance and developments of the register. (AM 573, 114, 574, 575, 576, 114, 577). Where the access to the register is provided online or in electronic form, Member States shall not require the payment of any fees.

3a. Member States shall not impose legal or practical restrictions to access to information as referred to in paragraph 1 on the basis of geographical establishment or location, legal or organisational status, nationality of the natural or legal person requesting access, or means or conditions of authentication (AM 579, 615, 616).

3b. Member States shall ensure that authorities in charge of the central registers keep a log of event when a person accesses the register. Member States shall ensure that authorities in charge of the central registers do not monitor or keep any log regarding the specific information in the register consulted by persons having a legitimate interest.

## Article 12a

### Searches in Beneficial Ownership Register

1. *The European Central Platform shall serve as a central search service, making available all information related to beneficial ownership.*
2. *Competent authorities, AMLA, self-regulatory bodies and obliged entities shall be able to make searches of beneficial ownership information as set out in Article 11 through the European Central Platform.*

*Persons having legitimate interest pursuant to Article 12 shall be able to make searches of the beneficial ownership information set out in Article 12 through the European Central Platform.*

*The following harmonised search criteria shall be useable for searches referred to in paragraph 2:*

- (a) *with regard to companies or other legal entities, trusts or similar arrangements:*
  - (i) *name of the legal entity or arrangement;*
  - (ii) *national registration number.*

*The search criteria under (i) and (ii) can be used alternatively.*

**(b) with regard to persons as beneficial owners:**

**(i) first name and surname of the beneficial owner;**

**(ii) month and year of birth of the beneficial owner;**

*The search criterion under (i) and (ii) can be used alternatively.*

**(c) with regard to nominee shareholders and nominee directors**

**first name and surname of the nominee shareholder and nominee director**

*Member States may make available further search criteria.*

**3. The European Central Platform shall allow the reporting of discrepancy as referred to in Article 10(5). (AM 115, 578)**

### *Article 13*

#### *Exceptions to the access rules to beneficial ownership registers*

In exceptional circumstances to be laid down in national law, where the access referred to in Articles 11(3) and 12(1) would expose the beneficial owner to disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, ~~or where the beneficial owner is a minor or otherwise legally incapable,~~ Member States ~~may~~ **shall** provide for an exemption from such access to all or part of the personal information on the beneficial owner on a case-by-case basis. Member States shall ensure that those exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances. Rights to an administrative review of the decision granting an exemption and to an effective judicial remedy shall be guaranteed. **Member States shall ensure that the exemptions granted are reviewed every two years.** A Member State that has granted exemptions shall publish annual statistical data on the number of exemptions granted and reasons stated and report the data to the Commission.

Exemptions granted pursuant to this Article shall not apply to the obliged entities referred to in Article 3, point (3)(b), of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation] that are public officials (AM 116, 580, 581).

### *Section 2*

**Bank account *and custodial crypto-asset wallet* information (AM 585)**

### *Article 14*

**Bank account *and custodial crypto-asset wallet* registers and electronic data retrieval systems (AM 586)**

1. Member States shall put in place centralised automated mechanisms, such as a central registers or central electronic data retrieval systems, which allow the identification, in a timely manner, of any natural or legal persons holding or controlling payment accounts and bank accounts identified by IBAN, as defined by Regulation (EU) No 260/2012 of the European Parliament and of the Council<sup>2</sup>, ***including virtual IBAN accounts, securities accounts*** and safe-deposit boxes held by a credit ***or financial*** institution within their territory, ***and custodial crypto-asset wallet*** (AM 117, 587, 588, 589)

Member States shall notify the Commission of the characteristics of those national mechanisms as well as the criteria pursuant to which information is included in those national mechanisms.

2. Member States shall ensure that the information held in the centralised mechanisms referred to in paragraph 1 is directly accessible in an immediate and unfiltered manner to national FIUs ***and AMLA***. The information shall also be accessible ***in a timely manner*** to national competent authorities for fulfilling their obligations under this Directive ***and Regulation (EU)...*** [add reference to AML Regulation]. AM (590)
3. The following information shall be accessible and searchable through the centralised mechanisms referred to in paragraph 1:
  - (a) for the customer-account ***and securities-account*** holder and any person purporting to act on behalf of the customer: the name, complemented by either the other identification data required under Article 18(1) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation] or a unique identification number (AM 591);
  - (b) for the beneficial owner of the customer-account ***or securities-account*** holder: the name, complemented by either the other identification data required under Article 18(1) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation] or a unique identification number; (AM 592)
  - (c) for the bank or payment account: the IBAN number, ***or an equivalent identification number***, and the date of account opening and closing, ***if applicable***; (AM 593)
  - (d) for the safe-deposit box: name of the lessee complemented by either the other identification data required under Article 18(1) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation] or a unique identification number and the duration of the lease period;
  - (da) ***for the custodial crypto-asset wallet holder and any person purporting to act on behalf of the customer: the name, complemented by either the other identification data required under article 18(1) of Regulation [please insert reference to the AMLR] or a unique identification number; (AM 596)***
  - (db) ***for the beneficial owner of the custodial crypto-asset wallet holder: the name, complemented by either the other identification data required under article 18(1) of Regulation [please insert reference to the AMLR] or a unique identification number. (AM 597)***

4. Member States may require other information deemed essential for FIUs, AMLA and other competent authorities for fulfilling their obligations under this Directive to be accessible and searchable through the centralised mechanisms.
5. The centralised automated mechanisms referred to in paragraph 1 shall be interconnected via the bank account registers (BAR) single access point to be developed and operated by the Commission.

The Commission is empowered to adopt, by means of implementing acts, the technical specifications and procedures for the connection of the Member States' centralised automated mechanisms to the single access point. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2).

6. Member States shall ensure that the information referred to in paragraph 3 is available through the single access point interconnecting the centralised automated mechanisms. Member States shall take adequate measures to ensure that ~~only~~ the information referred to in paragraph 3 that is up to date and corresponds to the actual bank account, ***securities account or custodial crypto-asset wallet*** information is made available through their national centralised automated mechanisms and through the single access point interconnecting the centralised automated mechanisms referred to in this paragraph. ***Member States shall take adequate measures to ensure that the historical information on closed customer-account holders, bank or payment accounts, custodial crypto-asset wallets and safe-deposit boxes is made available through their national centralised automated mechanisms and through the single access point interconnecting the centralised automated mechanisms referred to in this paragraph for a period of 5 years after the closure of the account or wallet. Member States may, without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings, allow or require the retention of such information or documents in concrete cases for a further period of maximum five years where the necessity and proportionality of such further retention have been established for the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing.*** The access to that information shall be granted in accordance with data protection rules. (AM 118, 599, 600)

The other information that Member States consider essential for FIUs and other competent authorities pursuant to paragraph 4 shall not be accessible and searchable through the single access point interconnecting the centralised automated mechanisms.

7. National FIUs and AMLA shall be granted immediate and unfiltered access to the information on payment and bank accounts and safe-deposit boxes ***referred in this Article*** in other Member States available through the single access point interconnecting the centralised automated mechanisms. ***National competent authorities shall be granted access in a timely manner to the information on payment and bank accounts and safe-deposit boxes referred in this Article in other Member States available through the single access point interconnecting the centralised automated mechanisms.*** Member States shall cooperate among themselves and with the Commission in order to implement this paragraph. (AM 119, 603, 604)

Member States shall ensure that the staff of the national FIUs ***and competent authorities entitled to access to information under the first subparagraph***, maintain high professional standards of confidentiality and data protection, are of high integrity and are appropriately skilled. (AM 605, 606)

8. Member States shall ensure that technical and organisational measures are put in place to ensure the security of the data to high technological standards for the purposes of the exercise by FIUs and AMLA of the power to access and search the information available through the single access point interconnecting the centralised automated mechanisms in accordance with paragraphs 5 and 6.

## Article 15

### *Implementing acts for the interconnection of registers*

1. The Commission shall adopt, by means of implementing acts, technical specifications and procedures necessary to provide for the interconnection of Member States' central registers in accordance with Article 10(11) with regard to (AM 608):
- (a) the technical specification defining the set of the technical data necessary for the platform to perform its functions as well as the method of storage, use and protection of such data;
  - (b) the common criteria according to which beneficial ownership information is available through the system of interconnection of registers (AM 612);
  - (c) the technical details on how the information on beneficial owners is to be made available, in accordance with Article 12a; (AM 120, 613)
  - (d) the technical conditions of availability of services provided by the system of interconnection of registers;
  - (e) the technical modalities to implement the different types of access to information on beneficial ownership in accordance with Articles 11 and 12 of this Directive, including the authentication of users through the use of electronic identification means and relevant trust services as set out in Regulation (EU) 910/2014, ***in a way that ensures that there are no geographical or other restrictions preventing access to persons granted access under Article 12;*** (AM615, 616)
  - ~~(f) the payment modalities where access to beneficial ownership information is subject to the payment of a fee according to Article 12(2) taking into account available payment facilities such as remote payment transactions [placeholder linked to article 12].~~

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2).

2. Where necessary, the Commission is empowered to adopt, by means of implementing acts, technical specifications and procedures necessary to provide for the interconnection of Member States' centralised mechanisms as referred to in Article 14(5), with regard to:
- (a) the technical specification defining the methods of communication by electronic means for the purposes of the bank account registers (BAR) single access point;
  - (b) the technical specification of the communication protocols;
  - (c) the technical specifications defining the data security, data protection safeguards, use and protection of the information which is searchable and accessible by means of the bank account registers (BAR) single access point interconnecting the centralised automated mechanisms;

- (d) the common criteria according to which bank account information is searchable through the single access point interconnecting the centralised automated mechanisms;
- (e) the technical details on how the information is made available by means of the single access point interconnecting the centralised automated mechanisms, including the authentication of users through the use of electronic identification means and relevant trust services as set out in Regulation (EU) 910/2014
- (f) the technical conditions of availability of services provided by the single access point interconnecting the centralised automated mechanisms.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2).

3. When adopting the implementing acts referred to in paragraphs 1 and 2, the Commission shall take into account proven technology and existing practices. The Commission shall ensure that the single access point to be developed and operated does not incur costs above what is absolutely necessary in order to implement this Directive.

#### **Recitals (18)-(43)**

- (18) Central registers of beneficial ownership information are crucial in combating the misuse of legal entities. *Therefore, Member States should ensure that the beneficial ownership information of legal entities and legal arrangements, information on nominee arrangements and information on foreign legal entities and foreign legal arrangements are held in a central register. (AM 11)* To ensure that the registers of beneficial ownership information are easily accessible and contain high-quality data, consistent rules on the collection and storing of this information should be introduced. *Central registers need to be accessible to the public, in a readily usable, machine readable format. (AMs 248)*
- (19) With a view to enhancing transparency in order to combat the misuse of legal entities, Member States should ensure that beneficial ownership information is stored in a central register located outside the company, in full compliance with Union law. Member States ~~can~~, *should*, *(AMs 12, 253)* for that purpose, use a central database, which collects beneficial ownership information, or the business register, or another central register. Member States may decide that obliged entities are responsible for filling in the register. Member States should make sure that in all cases that information is made available to competent authorities and FIUs and is provided to obliged entities when they take customer due diligence measures.
- (20) Beneficial ownership information of trusts and similar legal arrangements should be registered where the trustees and persons holding equivalent positions in similar legal arrangements are established or where they reside. In order to ensure the effective monitoring and registration of information on the beneficial ownership of trusts and similar legal arrangements, cooperation between Member States is also necessary. The interconnection of Member States' registries of beneficial owners of trusts and similar legal arrangements ~~would~~ *should* make this information accessible, and ~~would~~ *should* also ensure that the multiple registration of the same trusts and similar legal arrangements is avoided within the Union. (AM 13)
- (21) Timely access to information on beneficial ownership should be ensured in ways, which avoid any risk of tipping off the company concerned.
- (22) The accuracy of data included in the beneficial ownership registers is fundamental for all of the relevant authorities and other persons allowed access to that data, and to make



valid, lawful decisions based on that data. Therefore, *Member States should ensure that entities in charge of the central registers verify, at the time of submission of the beneficial ownership information and on a regular basis thereafter, that that information is adequate, accurate and up to date. Member States should ensure that entities in charge of central registers have at their disposal state-of-the-art technology to carry out automated verifications in a manner that safeguards fundamental rights and avoids discriminatory outcomes. Furthermore*, where sufficient reasons arise, after careful analysis by the registrars, to doubt the accuracy of the beneficial ownership information held by the registers, legal entities and legal arrangements should be required to provide additional information on a risk-sensitive basis. In addition, it is important that Member States entrust the entity in charge of managing the registers with sufficient powers *and resources* to verify beneficial ownership and the veracity of information provided to it, and to report any suspicion to their FIU. Such powers should extend to the conduct of inspections at the premises of the legal entities *and, where applicable, to obliged entities, in accordance with national law. Similarly, such powers should extend to representatives of foreign legal persons and foreign legal arrangements in the Union, where there are such representatives.* (AMs 14, 255, 256, 258, 260, 261)

- (22a) *Where a verification carried out at the time of submission of the beneficial ownership information leads an entity in charge of the register to conclude that there are inconsistencies or errors in that information, or where that information otherwise fails to fulfil the necessary requirements, Member States should ensure that such entity is able to withhold and suspend the certification of registration and any legal effects thereof; ~~determine the invalidation of specific legal acts or transactions carried out by the legal entities or express trusts or similar legal arrangements,~~ until the beneficial owner information provided is in order. Where the inconsistencies are detected at a later stage, Member States should ensure that the legal consequences attached to the registration cannot follow.* (AMs 15, 263)

(22aa) *Member States shall ensure that in the event of repeated failure to provide up-to-date, accurate and adequate information to the authorities in charge of the central registers, relevant national authorities ensure that appropriate sanctions follow. Such sanctions may include restrictions in the access to certain professions and in the exercise of certain functions within a corporate, legal entity or legal arrangement, restrictions in the establishment of a business relationship with an obliged entities, in the exercise of ownership rights of a corporate and legal entity or in the ability to receive dividends, and suspension or discontinuation of activities. The entity in charge of registers shall notify the repeated failures to the national authorities competent for imposing appropriate sanctions. In the event of repeated failures to provide up-to-date, accurate and adequate information, sanctions shall be increased to the level necessary to ensure compliance.*

- (22b) *Entities in charge of central registers should be operationally independent and autonomous and have the authority and capacity to carry out their functions free of political, government or industry influence or interference. Staff of those entities should be of high integrity and appropriately skilled and maintain high professional standards. Employees or managers of the central register who report breaches of the requirements under this Directive should be legally protected from being exposed to threats, retaliatory or hostile action and, in particular, adverse or discriminatory employment actions in accordance with Directive (EU) 2019/1937.* (AM 16)



- (22c) *Peer reviews are an effective instrument to ensure that registers established in Member States fulfil the requirements of this Directive and to identify best practices and shortcomings. AMLA should therefore have a role in conducting peer reviews of some or all of the activities of the entity in charge of the central beneficial ownership register with the purpose of assessing whether those entities have mechanisms to fulfil the requirements of this Directive and effectively check whether the beneficial ownership information held in the register is accurate, adequate and up to date. (AM 17)*
- (22d) *Beneficial ownership registers are well placed to identify, in a rapid and efficient manner, those individuals who ultimately own or control legal entities and arrangements, including individuals designated in relation to targeted financial sanctions. Timely detection of such ownership structures contributes to improving the understanding of the exposure to risks of evasion of targeted financial sanctions, and to the adoption of mitigating measures to reduce such risks. It is therefore important that registers be required to screen the beneficial ownership information they hold against designations in relation to targeted financial sanctions, both immediately upon such designation and regularly thereafter, in order to detect whether changes in the ownership or control structure of the legal entity or arrangement are conducive to risks of evasion of targeted financial sanctions. Entities in charge of beneficial ownership registers should promptly share such findings with competent authorities, including FIUs and AML/CFT supervisors, for the purposes of ensuring compliance with targeted financial sanctions. (18, 265)*
- (23) Moreover, the reporting of discrepancies between beneficial ownership information held in the central registers and beneficial ownership information available to obliged entities and, where applicable, competent authorities, is an effective mechanism to verify the accuracy of the information. Any such discrepancy should be swiftly identified, reported and corrected.
- (24) In view of ensuring that the mechanism of discrepancy reporting is proportionate and focused on the detection of instances of inaccurate beneficial ownership information, Member States ~~may~~ **should** allow obliged entities to request the customer to rectify discrepancies of a technical nature directly with the entity in charge of the central registers. Such option only applies to low-risk customers and to those errors of a technical nature, such as minor cases of misspelt information, where it is evident that those do not hinder the identification of the beneficial owner(s) and the accuracy of the information. (AM 19)
- (26) To ensure a level playing field in the application of the concept of beneficial owner, it is of utmost importance that, across the Union, legal entities obtain benefit from uniform reporting channels and means. To that end, the format for the submission of beneficial ownership information to the relevant national registers should be uniform and offer guarantees of transparency and legal certainty.
- (27) In order to ensure a level playing field among the different types of legal forms, trustees should also be required to obtain and hold beneficial ownership information and to communicate that information to a central register or a central database.
- (27a) *FIUs, other competent authorities, self-regulatory bodies and obliged entities should have prompt, unrestricted and free access to beneficial ownership information through the European Central Platform for the purposes of fulfilling their duties of combating money laundering and terrorism financing and carrying out due diligence. (AM 20, 268)*

- (28) ~~[placeholder related to SOVIM]~~ ***Public registers of beneficial ownership are important tools for advancing the fight against money laundering and terrorism financing, corruption, tax abuse and other financial crimes predicate offences. Public access to beneficial ownership information can allow allows greater scrutiny of information by civil society, including by the press or civil society organisations, and contributes to preserving trust in the integrity of the financial system. It can contribute to combating the misuse of corporate and other legal entities and legal arrangements for the purposes of money laundering or terrorist financing, both by helping investigations and through reputational effects, given that anyone who could enter into a business relationship is aware of the identity of the beneficial owners. As such, public information can be a deterrent against such misuse. It may also facilitate also facilitates the timely and efficient availability of information for obliged entities as well as authorities of third countries involved in combating such offences. Publicly available beneficial ownership data can also reduce the cost and complexity of due diligence and risk management for the private sector, thereby levelling the playing field and increasing competitiveness.*** The access to that information would also help investigations on money laundering, associated predicate offences and terrorist financing. (AMs 20, 269)
- (29) ~~[placeholder related to SOVIM]~~ Confidence in financial markets from investors and the general public depends in large part on the existence of an accurate disclosure regime that provides transparency in the beneficial ownership and control structures of companies. This is particularly true for corporate governance systems that are characterised by concentrated ownership, such as the one in the Union. On the one hand, large investors with significant voting and cash flow rights may encourage long term growth and firm performance. On the other hand, however, controlling beneficial owners with large voting blocks may have incentives to divert corporate assets and opportunities for personal gain at the expense of minority investors. The potential increase in confidence in financial markets should be regarded as a positive side effect and not the purpose of increasing transparency, which is to create an environment less likely to be used for the purposes of money laundering and terrorist financing.
- (30) ~~[placeholder related to SOVIM]~~ Confidence in financial markets from investors and the general public depends in large part on the existence of an accurate disclosure regime that provides transparency in the beneficial ownership and control structures of corporate and other legal entities as well as certain types of trusts and similar legal arrangements. Member States should therefore allow access to beneficial ownership information in a sufficiently coherent and coordinated way, by establishing confidence rules of access by the public, so that third parties are able to ascertain, throughout the Union, who are the beneficial owners of corporate and other legal entities as well as, ***provided that there is a legitimate interest, of certain types of express trusts and similar legal arrangements.*** (22, 273, 274, 275)

***In its judgment of 22 November 2022 Case C-37/20<sup>9</sup>, the Court of Justice ruled that persons considered as having a legitimate interest in accessing the information on beneficial owners should be connected with the prevention and combating of money laundering and terrorist financing. The Court identified notably four several categories of persons as having a legitimate interest in accessing such information: persons acting for the purpose of journalism, reporting or other form of expression in the media that are connected with the prevention and combating of money laundering, any of its associated predicate offences or terrorist financing; civil society***

<sup>9</sup> Judgment of the Court of 22 November 2022, *Luxembourg Business Registers*, C-37/20, ECLI:EU:C:2022:912, paragraphs 74

organisations that are connected with the prevention and combating of money laundering, any of its associated predicate offences or terrorist financing; persons who are likely to enter into transactions or business relationship with a corporate, legal entity or legal arrangements; financial institutions and authorities in so far as they are involved in the prevention and combat of money laundering, its predicate offences or terrorist financing and do not already have access pursuant to Article 11 of this Directive. Therefore this Directive aims at defining a minimum and non-exhaustive list of persons that have a legitimate interest in accessing information on beneficial owners. Other categories of persons may also claim a legitimate interest based on other grounds than those listed in this Directive. While fully respecting applicable case law of the Court of Justice, the provisions of this Directive should be without prejudice of any EU or national laws providing for broader access to specific beneficial information on the basis of different objectives of general interest or rights to information.

For the purpose of assessing legitimate interest of persons acting for the purpose of journalism, reporting or any other form of expression in the media, the concept of media should be interpreted broadly, to include any means of providing content accessible to the public, in order to inform, entertain or educate, regardless of whether there is editorial responsibility of a traditional media service provider or not;

Civil society organisations should include all forms of non-governmental organisations established under the law of a Member State or a third country, as well as local, national or international grassroots organisations and/or associations of citizens which are not managed by state authorities.

The legitimate interest should apply without any discrimination based on nationality, country of residence or country of establishment of the person making a request, including on the condition of authentication means.

- (31) [placeholder related to SOVIM] With regard to corporate, ~~and other~~ legal entities and legal arrangements, a fair balance should be sought in particular between the general public interest in the prevention of money laundering, its predicate offences and terrorist financing and the data subjects' fundamental rights. The set of data to be made available to the ~~public~~ persons having a legitimate interest should be limited, clearly and exhaustively defined, and should be of a general nature, so as to minimise the potential prejudice to the beneficial owners. At the same time, information made accessible to the persons having a legitimate interest ~~public~~ should not significantly differ from the data currently collected. In order to limit the interference with the right to respect for their private life in general and to protection of their personal data in particular, that information should relate essentially to the status of beneficial owners of corporate, ~~and other~~ legal entities and legal arrangements and should strictly concern the sphere of economic activity in which the beneficial owners operate. In cases where the senior managing official has been identified as the beneficial owner only *ex officio* and not through ownership interest held or control exercised by other means, this should be clearly visible in the registers.
- (32) [placeholder related to SOVIM] ~~In case of Beneficial ownership information on express trusts and similar legal arrangements, the information should be accessible to any member of the general public, provided that the legitimate interest can be demonstrated in a similar manner.~~ This should include situations where natural or legal persons file

a request in relation to a trust or similar legal arrangement which holds or owns a controlling interest in a legal entity incorporated or created outside the Union through direct or indirect ownership, including through bearer shareholding, or through control via other means. ~~The interpretation of the legitimate interest by the Member States should not restrict the concept of legitimate interest to cases of pending administrative or legal proceedings, and should enable to take into account the preventive work in the field of anti-money laundering and its predicate offences and counter-terrorist financing undertaken by non-governmental organisations and investigative journalists. While trusts and other legal arrangements can be used in complex corporate structures, their primary objective remains the management of individual wealth. In order to adequately balance the legitimate aim of preventing the use of the financial system for the purposes of money laundering or terrorist financing, which public scrutiny enhances, and the protection of fundamental rights of individuals, in particular the right to privacy and protection of personal data, it is necessary to provide for the demonstration of a legitimate interest in accessing beneficial ownership information of trusts and other legal arrangements..~~ (AM 23, 277)

- (33) ~~[placeholder related to SOVIM]~~ In order to ensure that the information available to the ~~public~~ persons having a legitimate interest allows the correct identification of the beneficial owner, a minimum set of data should be accessible to the ~~public~~ persons having a legitimate interest. Such data should allow for the unequivocal identification of the beneficial owner, whilst minimising the amount of personal data ~~publicly~~ accessible. In the absence of information pertaining to the name, the month and year of birth and the country of residence and nationality of the beneficial owner, it would not be possible to establish unambiguously who the natural person being the beneficial owner is. Similarly, the absence of information on the *nature and extent of* beneficial interest held, *including information on ownership and control chain, as well as the date they became beneficial owner*, would make it impossible to determine why that natural person should be identified as being the beneficial owner *at a given moment*. Therefore, in order to avoid misinterpretations of the beneficial ownership information ~~publicly~~ available and to ensure a proportionate disclosure of personal data consistent across the Union, it is appropriate to lay down the ~~minimum~~ set of data that can be accessed by persons having a legitimate interest ~~the public~~. (AM 24, 279)

- (34) ~~[placeholder related to SOVIM]~~ Competent authorities, obliged entities and persons having a legitimate interests need to access information on the beneficial owners of corporate, legal entities and legal arrangements which have been struck off from the registers. This is due to the fact that investigations, monitoring, analysis or research need sufficient time to detect, uncover and identify facts related to money laundering and terrorist financing cases. Money laundering schemes often involve corporate, legal entities and legal arrangements which are created by criminals for a short period of time to limit traceability. An immediate deletion of the data would create a loophole whereby criminals would strike off related corporates, legal entities or legal arrangements for the purpose of removing any trace to competent authorities, obliged entities and persons having a legitimate interest. ~~The enhanced public scrutiny may contribute to preventing the misuse of legal entities and legal arrangements, including tax avoidance.~~ Therefore, it is essential that the information on beneficial ownership remains available through the national registers and through the system of interconnection of beneficial ownership registers for a minimum of five years *and up to 10 years* after the grounds for registering beneficial ownership information of the trust or similar legal arrangement have ceased to exist. ~~However,~~ Without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings,



Member States should be able to allow or require the retention of such information or documents in concrete cases for a further period of maximum five years where the necessity and proportionality of such further retention have been established for the prevention, detection, investigation or prosecution of suspected money laundering, its predicate offences or terrorist financing. Member States should be able to provide by law for the processing of the information on beneficial ownership, including personal data for other purposes if such processing meets an objective of public interest and constitutes a necessary and proportionate measure in a democratic society to the legitimate aim pursued.

- (35) Moreover, with the aim of ensuring a proportionate and balanced approach and to guarantee the rights to private life and personal data protection, ~~it should be possible for Member States to~~ **should** provide for exemptions to the disclosure of the personal information on the beneficial owner through the registers of beneficial ownership information and to access to such information, in exceptional circumstances, where that information would expose the beneficial owner to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation. **Such exemptions should be granted by competent authorities on a case by case basis and upon a detailed analysis of the nature of the exceptional circumstances in each case.** It should also be possible for Member States to require online registration in order to identify any person who requests information from the register, as well as the payment of a **proportionate and adequate** fee for access to the information in the register, **which should not exceed the direct costs of requesting or making the information available.** Where the access to the register is provided online through electronic means, Member States should not request the payment of any fees since it is assumed that the direct cost of making the information available is null. (AM 25, 281, 282)

*(35a) Currently certain Member States require online registration in order to identify any person who requests information from the register, as well as the payment of a fee to obtain the information from the register. Identification of users can be a legitimate requirement but it should not lead to discrimination based on their country of residence or nationality. Furthermore, requirements linked to registration or to fees to be paid can impede access to the beneficial owner registers. Therefore it is essential that Member States ensure access to the beneficial ownership information without any restrictions based on geographical location or nationality and may undermine their public character.* (AM 283)

- (36) Directive (EU) 2018/843 achieved the interconnection of Member States' central registers holding beneficial ownership information through the European Central Platform established by Directive (EU) 2017/1132 of the European Parliament and of the Council<sup>11</sup>. **It is essential that the European Central Platform serve as a central search service making available all information related to beneficial ownership to competent authorities, self-regulatory bodies, and obliged entities and persons having a legitimate interest.** Continued involvement of Member States in the functioning of the whole system should be ensured by means of a regular dialogue between the Commission and the representatives of Member States on the issues concerning the operation of the system and on its future development. **The European Parliament should be informed about the evolution of this dialogue.** (26, 285)
- (37) ~~[placeholder]~~ Through the interconnection of Member States' beneficial ownership registers, both national and cross-border access to information on the beneficial ownership



of legal arrangements contained in each Member State's register should be granted based on the definition of legitimate interest, by virtue of a decision taken by the relevant entity of that Member State. To avoid that decisions on limiting access to beneficial ownership information which are not justified cannot be reviewed, appeal mechanisms against such decisions should be established. With a view to ensuring coherent and efficient registration and information exchange, Member States should ensure that their entity in charge of the register cooperates with its counterparts in other Member States, sharing information concerning trusts and similar legal arrangements governed by the law of one Member State and administered in another Member State.

- (38) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>12</sup> applies to the processing of personal data for the purposes of this Directive. Natural persons whose personal data are held in national registers as beneficial owners should be informed about the applicable data protection rules. Furthermore, *competent authorities, obliged entities and persons having a legitimate interest should be able to access the history of all beneficial owners in a given corporate, legal entity or legal arrangements in order to identify previous beneficial owners. Such information may be particularly necessary for monitoring, analysis and investigation related to money laundering, predicate offences or terrorist financing.* Only personal data that is up to date and corresponds to the actual beneficial owners *at a given moment in time* should be made available and the beneficiaries should be informed about their rights under the Union legal data protection framework and the procedures applicable for exercising those rights ~~[placeholder related to SOVIM]~~. ~~*In addition, to prevent the abuse of the information contained in the registers and to balance out the rights of beneficial owners, Member States might find it appropriate to consider making information relating to the requesting person along with the legal basis for their request available to the beneficial owner.*~~ (AM 288)
- (39) Delayed access to information by FIUs and other competent authorities on the identity of holders of bank, and payment *and securities* accounts, *custodial crypto-asset wallets* and safe-deposit boxes, especially anonymous ones, hampers the detection of transfers of funds relating to money laundering and terrorist financing. National data allowing the identification of bank, and payments *and securities* accounts, *custodial crypto-asset wallets* and safe-deposit boxes belonging to one person is fragmented and therefore not accessible to FIUs and to other competent authorities in a timely manner. It is therefore essential to establish centralised automated mechanisms, such as a register or data retrieval system, in all Member States as an efficient means to get timely access to information on the identity of holders of bank and payment accounts, *including virtual bank accounts, securities accounts, custodial crypto-asset wallets* and safe-deposit boxes, their proxy holders, and their beneficial owners. *Such information should include the historical information on closed customer-account holders, bank, payment and securities accounts, custodial crypto-asset wallets and safe-deposit boxes.* When applying the access provisions, it is appropriate for pre-existing mechanisms to be used provided that national FIUs can access the data for which they make inquiries in an immediate and unfiltered manner. Member States should consider feeding such mechanisms with other information deemed necessary and proportionate for the more effective mitigation of risks relating to money laundering and the financing of terrorism. Full confidentiality should be ensured in respect of such inquiries and requests for related information by FIUs and competent authorities ~~*other than those authorities responsible for prosecution.*~~ (AM 27)
- (40) In order to respect privacy and protect personal data, the minimum data necessary for the carrying out of AML/CFT investigations should be held in centralised automated

mechanisms for bank accounts and crypto-asset wallets, such as registers or data retrieval systems. It should be possible for Member States to determine which data it is useful and proportionate to gather, taking into account the systems and legal traditions in place to enable the meaningful identification of the beneficial owners. When transposing the provisions relating to those mechanisms, Member States should set out retention periods equivalent to the period for retention of the documentation and information obtained within the application of customer due diligence measures. It should be possible for Member States to **exceptionally** extend the retention period ~~on a general basis by law, without requiring case by case decisions~~ **for duly justified reasons**. The additional retention period should not exceed an additional five years. *That period should be without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings, allow or require the retention of such information or documents in concrete cases for a further period of maximum five years where the necessity and proportionality of such further retention have been established for the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing, without prejudice to national law setting out other data retention requirements allowing case by case decisions to facilitate criminal or administrative proceedings.* Access to those mechanisms should be on a need-to-know basis. (AM 28)

- (41) Through the interconnection of Member States' centralised automated mechanisms, the national FIUs *and other competent national authorities designated according to Directive 2019/1153*<sup>10a</sup> would be able to obtain swiftly cross-border information on the identity of holders of bank, ~~and~~ payment *and securities* accounts, *custodial crypto-asset wallets* and safe deposit boxes in other Member States, which would reinforce their ability to effectively carry out financial analysis *detect, investigate or prosecute criminal offences, as well as* and cooperate with their counterparts from other Member States. Direct cross-border access to information on bank payment *and securities* accounts, *custodial crypto-asset wallets* and safe deposit boxes would enable the Financial Intelligence Units to produce financial analysis within a sufficiently short timeframe to detect potential money laundering and terrorist financing cases and guarantee a swift law enforcement action. (AM 292)
- (42) In order to respect the right to the protection of personal data and the right to privacy, and to limit the impact of cross-border access to the information contained in the national centralised automated mechanisms, the scope of information accessible through the bank account registers (BAR) central access point would be restricted to the minimum necessary in accordance with the principle of data minimisation in order to allow the identification of any natural or legal persons holding or controlling payment accounts and bank accounts identified by IBAN, *securities accounts, custodial crypto-asset wallets* and safe-deposit boxes. ~~Furthermore, only~~ FIUs *and the other competent authorities designated according to Directive 2019/1153* should be granted immediate and unfiltered access to the central access point. Member States should ensure that the FIUs' staff maintain high professional standards of confidentiality and data protection, that they are of high integrity and are appropriately skilled **including in detecting biases in and ethical use of big data sets**. Moreover, Member States should put in place technical and organisational measures guaranteeing the security of the data to high technological standards. (AM 29, 293)

<sup>10a</sup> Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA, OJ L 186, 11.7.2019, p. 122–137.

- (43) The interconnection of Member States' centralised automated mechanisms (central registries or central electronic data retrieval systems) containing information on bank and payment accounts and safe-deposit boxes through the BAR single access point necessitates the coordination of national systems having varying technical characteristics. For this purpose, technical measures and specifications taking into account the differences between the national centralised automated mechanisms should be developed.

## **COMP DA (Land and real estate registers, high-value goods) (Articles 16-16b, Recitals 44-44a)**

### **Articles 16-16b**

**AMs Covered:** 121 (Rapporteurs), 623 (Garicano and others), 122 (Rapporteurs), 624 (Garicano and others), 625 (Peter-Hansen and others), 121 (Rapporteurs), 623 (Garicano and others), 122 (Rapporteurs), 624 (Garicano and others), 625 (Peter-Hansen and others), 123 (Rapporteurs), 124 (Rapporteurs), 626 (Regner), 628 (Peter-Hansen and others), 629 (Strugariu and others), 630 (Garicano and others), 631 (Castaldo and others), 635 (Peter-Hansen and others), 632 (Peter-Hansen and others), 633 (Radev and others), 634 (Garicano and others), 639 (Castaldo and others), 640 (Peter-Hansen and others), 125 (Rapporteurs), 637 (Seekatz and others), 638 (Peter-Hansen and others), 643 (Garicano and others), 644 (Strugariu and others), 126 (Rapporteurs), 645 (cross-group), 648 (cross-group).

**Fall:** 627 (Seekatz and others), 636 (Peter-Hansen and others), 641 (Schirdewan), 642 (Radev), 646 (Schirdewan), 647 (Schirdewan).

### **Recitals(44)-(44a)**

**AMs covered:** 30 (rapporteurs), 294 (Peter-Hansen & other), 295 (Garicano & others),

**AMs falling:** 296 (Seekatz and other), 297 (Ferber), 298 (Peter-Hansen & other), 299 (Strugariu & others), 300 (Seekatz & others), 301 (Garicano & others)

### Section 3

*Access for competent authorities to information on Land and Real estate registers and certain goods (AM 121, 623)*

#### *Article 16*

*Access to Land and Real estate information registers (AM 122, 624, 625)*

1. Member States shall provide competent authorities with access via ***a single access point in each Member State*** to information which allows the identification in a timely manner of any natural or legal person owning ***land or*** real estate. ***Access shall be granted through either public registers or electronic data retrieval systems, provided that interoperability can be ensured. Where real estate is owned by a legal person or arrangement, the information on the beneficial owner shall be available, either***

*directly in the register or retrieval system referred to in this paragraph, or in the beneficial ownership register referred to in Article 10, including where the legal person is a foreign legal entity or arrangement, as required under Article 48 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation]. where such registers or systems are available. Competent authorities **other than FIUs** shall also have **timely** access to information allowing the identification and analysis of transactions involving **land or** real estate, including their economic value, **the source of funds** and details of the natural or legal persons involved in those transactions including, ~~where available~~, whether the natural or legal person owns, sells or acquires **land or** real estate on behalf of a legal arrangement. (AM 123, 124, 626, 628, 629, 630, 631, 635)*

***FIUs and AMLA and asset recovery authorities** shall be granted direct, immediate, unrestricted and free access to the information referred to in the first subparagraph (AM 632, 633, 634)*

2. By [3 months after the date of transposition of this Directive], Member States shall notify to the Commission the list of competent authorities that were granted access to the registers or systems referred to in paragraph 1 and the type of information available to them. Member States shall update such notification when changes to the list of competent authorities or to the extent of access to information granted occurs. The Commission shall make that information, including any change to it, available to the other Member States.
- 2a. By ... [3 years after the date of transposition of this Directive], Member States shall ensure that information referred to in paragraph 1 is held in a register or electronic data retrieval system in machine-readable format. Information may be collected in accordance with national systems. (AM 639, 640)

## **Article 16a**

### **Implementing act for the interconnection of land and real estate single access point**

1. *The Member States single access points referred to in Article 16(1) shall be interconnected via the European real estate data (E-RED) single access point to be developed and operated by the Commission by [4 years after the date of entry into force of this Directive] (AM 125, 637, 638, 643)*

*The Commission is empowered to adopt, by means of implementing acts, technical specifications and procedures necessary to provide for the interconnection of Member States' single access point to the European real estate data single access point referred to in paragraph 1 of this Article in accordance with Article 16 with regard to:*

- (a) *the technical data necessary for the European system to perform its functions as well as the method of storage, use and protection of that technical data;*
- (b) *the common criteria according to which land and real estate information shall be available through the system of interconnection of registers and retrieval systems;*
- (c) *the technical details on how land and real estate information shall be made available;*

- (d) *the technical conditions of availability of services provided by the system of interconnection of registers and retrieval systems; (AM 643)*

*Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2). (125, 637, 638)*

3. *When adopting implementing acts referred to in paragraph 2, the Commission shall take into account proven technology and existing practices. The Commission shall ensure that the system required to be developed and operated for the interconnection does not incur costs above what is absolutely necessary in order to implement this Directive. (AM 643)*

#### Section 4

##### Access for competent authorities to information on ~~high-value~~certain goods

#### Article 16b

##### Access to beneficial ownership information of motor vehicles, aircrafts and watercrafts

1. Member States shall provide competent authorities with timely access to information which allows the identification of any natural person or the beneficial owner of a legal person owning motor vehicles, aircrafts or watercrafts whose estimated value is above EUR 200.000 or the equivalent in national currency.

2. Member States shall ensure that information referred to in paragraph 1 is available to competent authorities, either through registers or electronic data retrieval systems, where such registers or systems are available, or through other systems which are deemed as efficient, and that ensure that the data is available in a machine-readable and interoperable format.

FIUs and AMLA shall be granted direct and immediate access to the information referred to in the first paragraph for the purpose of the prevention and combating of money laundering, any of its associated predicate offences or terrorist financing.

3. Member States shall ensure that where the value of motor vehicles, aircrafts or watercrafts is stated or estimated above 2.000.000 EUR or the equivalent in national currency, the information referring to the proof of acquisition or purchase contract (including at least the identification of all parties involved in the transaction, the means of payment, as well as the source of funds) is included and available in the register and can be provided to competent authorities and AMLA without delay, when requested by retrieval systems, or other systems provided by Member States under paragraph 2.

4. Where motor vehicles, aircrafts or watercrafts are owned by a legal person or arrangement, the information on the beneficial owner shall be available, either directly in the register or systems referred to in the first and second paragraph, or in



the beneficial ownership register referred to in Article 10, including where the legal person is a foreign legal entity or arrangement, as required under Article 48 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation].

5. By [3 months after the date of transposition of this Directive], Member States shall notify the Commission the list of competent authorities that were granted access to the registers or systems referred to in paragraph 2 and the type of information available to them. Member States shall update such notification when changes to the list of competent authorities or to the extent of access to information granted occurs. The Commission shall make that information, including any change to it, available to the other Member States.

### Article 16c

#### Access to information on high-value goods in freezones

1. Member States shall provide competent authorities with access via a single access point in each Member State to information which allows the identification in a timely manner of any natural, legal person or legal arrangement owning ~~relevant high-value~~ any tangible movable goods ~~which are stored, traded or transiting in a free zone or customs warehouse in the Union, through either registers or electronic data retrieval systems, provided that interoperability can be ensured.~~

Where ~~relevant high-value~~ those goods are owned by a legal person or arrangement, the information on the beneficial owner shall be available, either directly in the register or retrieval system referred to in this paragraph, or in the beneficial ownership register referred to in Article 10, including where the legal person is a foreign legal entity or arrangement, as required under Article 48 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation].

2. By [3 years after the date of transposition of this Directive], Member States shall ensure that information referred to in paragraph 1 is held in a register or electronic data retrieval system in machine-readable format. Information may be collected in accordance with national systems.
3. By [3 months after the date of transposition of this Directive], Member States shall notify to the Commission the list of competent authorities that were granted access to the registers or systems referred to in paragraph 1 and the type of information available to them. Member States shall update such notification when changes to the list of competent authorities or to the extent of access to information granted occurs. The Commission shall make that information, including any change to it, available to the other Member States.
4. Member States shall ensure that the information held in the mechanisms referred to in paragraph 1 is directly accessible in an immediate and unfiltered manner to national FIUs and AMLA for the purpose of the prevention and combating of money laundering, any of its associated predicate offences or terrorist financing. The information shall also be accessible in a timely manner to national competent authorities for fulfilling their obligations under this Directive and [add reference to AML Regulation].

5. By [1 year after the date of transposition of this Directive] the mechanisms referred to in paragraph 1 shall be interconnected via the free zone goods' information (FZGI) single access point to be developed and operated by the Commission.
6. Member States shall ensure that the information referred to in paragraph 1 is available through the single access point interconnecting the mechanisms. Member States shall ensure that the information referred to in paragraph 1 is up to date and information is made available through their national mechanisms and through the single access point interconnecting the mechanisms referred to in this paragraph. Member States shall ensure that the historical information on goods is made available through their mechanisms and through the single access point interconnecting the mechanisms referred to in this paragraph for a period of maximum 5 years after the end of the storing, transiting or trading.
7. National FIUs shall be granted immediate and unfiltered access to the information on free zone goods as referred in this Article in other Member States available through the single access point interconnecting the mechanisms. National competent authorities shall be granted access in a timely manner to the information on free zone goods as referred in this Article in other Member States available through the single access point interconnecting the mechanisms. Member States shall cooperate among themselves and with the Commission in order to implement this paragraph.

Recitals (44)-(44a)

- (44) **Land and** real estate is an attractive commodity for criminals to launder the proceeds of their illicit activities, as it allows obscuring the true source of the funds and the identity of the beneficial owner. Proper and timely identification of natural or legal person owning **land and** real estate by FIUs and other competent authorities is important both for detecting money laundering schemes as well as for freezing, **seizing** and confiscation of assets **most in particular in the case of targeted financial sanctions**. **Member should set-up registers or electronic data retrieval systems to effectively put an end to real estate or land as a means to launder money.** It is therefore important that Member States provide FIUs and competent authorities with access to information **through a single access point in each Member State**, which allows the identification in a timely manner of natural or legal person owning **such land and** real estate, **including through registers or electronic data retrieval systems**, and information relevant for the identification of the **beneficial owner, as well as timely access to the risk** and suspicion of the transaction. **Such data should be interconnected via the European real estate data single access point (E-RED) to be developed and operated by the Commission.** (AMs 29, 294, 295)
- (44a) **Certain goods registered under national law can be attractive commodities for criminals to launder the proceeds of their illicit activities. Member States should provide for systems to aggregate information on ownership of those goods, for example watercraft and aircraft. Member States should also consider aggregating, through registers or other systems, information on ownership of certain goods of high value, particularly insured goods. Proper and timely identification of natural persons who are beneficial owners of those goods by FIUs and other competent authorities is important both for detecting money laundering schemes and for freezing assets. It is therefore**

*important for Member States to provide FIUs and competent authorities with access to information which allows the identification in a timely manner of natural or beneficial ownership of certain goods and to information relevant for the identification of the risk and suspicion of transactions. Given the money laundering and terrorist financing risk posed by goods in freezones, it is similarly important for Member States to ensure that information on such goods in freezones is available to competent authorities through register or electronic data retrieval system on free zones. Those registers or data retrieval system should be interconnected via the free zone goods' information (FZGI) single access point to be developed and operated by the Commission (AM 31).*

## COMP DB – Financial Intelligence units (Articles 17-28, Recitals 45-54)

### Articles 17-28

**AMs Covered:** 127 (rapporteurs), 650 (Pereira), 651 (Garicano and others), 653 (Peter-Hansen and others), 654 (Peter-Hansen and others), 129 (Rapporteurs), 656 (Garicano and others), 128 (Rapporteurs), 657 (Radev and others), 658 (Garicano and others), 130 (Rapporteurs), 659 (Garicano and others), 660 (Radev and others), 131-132 (Rapporteurs), 661 (Peter-Hansen and others), 133 (rapporteurs), **663 (Tang)**, 665 (Peter-Hansen and others), 666 (Pereira), 667 (Radev and others), 668 (Schirdewan), 669 (Garicano and others), 133 (Rapporteurs), AM 133 (Rapporteurs), 670 (Schirdewan), 671 (Regner), 672 (Peter-Hansen), 673 (Strugariu), 674 (Garicano), 675 (Peter-Hansen), 679 (Regner), 680 (Peter-Hansen and others), 681 (Niedermayer), 682 (Garicano and others), 685 (Peter-Hansen and others), 686 (Garicano and others), 687 (Niedermayer), 688 (Niedermayer), 689 (Peter-Hansen and others), 134 (rapporteurs), 693 (Garicano and others), 694 (Seekatz and others), 695 (Peter-Hansen and others) 135 (rapporteurs), 136 (rapporteurs), 701 (Garicano and others), 702 (Peter-Hansen), 703 (Daly), 705 (Radev and others), 706 (Schirdewan), 707 (Schirdewan), 710 (Peter-Hansen and others), 709, 711 (Radev and others), 712 (Pereira), 713 (Beck), 714 (Rookmaker), 717 (Schirdewan), 718 (Beer), 721 (Garicano and others), 722 (Strugariu and others), 723 (Peter-Hansen and others), 137 (Rapporteurs), 724 (Garicano and others), 725 (Peter-Hansen and others), 727 (Garicano), 728 (Peter-Hansen and others), 729 (Peter-Hansen and others), 138 (Rapporteurs), 730 (Peter-Hansen and others), 139 (Rapporteurs), 731 (Peter-Hansen and others), 732 (Garicano and others), 140 (Rapporteurs), 738 (Garicano and others), 739 (Daly), 141 (Rapporteurs), 740 (Peter-Hansen and others), 142 (Rapporteurs), 143 (Rapporteurs), 149 (Rapporteurs), 741 (Peter-Hansen and others), 144 (Rapporteurs), 747 (Garicano and others), 749 (Seekatz and others), 145 (Rapporteurs), 751 (Garicano and others), 752 (Strugariu and others), 146 (Rapporteurs), 147 (Rapporteurs), 148 (Rapporteurs), 150 (Rapporteurs), 754 (Garicano and others), 755 (Ferber), 756 (Garicano and others), 151 (Rapporteurs), 758 (Peter-Hansen and others), 760 (Ferber), 761 (De Lange and others), 762 (Karas), 152 (Rapporteurs), 764 (Peter-Hansen and others) 766 (Peter-Hansen and others), 153 (Rapporteurs), 154 (Rapporteurs), 770 (Peter-Hansen and others), 771 (De Lange and others), 772 (Schirdewan), 773 (Strugariu and others), 155 (Rapporteurs), 775 (Garicano and others), 776 (Pereira), 777 (Pereira), 778 (Beck), 779 (Garicano and others), 156 (Rapporteurs), 157 (Rapporteurs), 780 (Garicano and others), 781 (Peter-Hansen and others), 782 (Garicano and others), 158 (Rapporteurs), 159 (Rapporteurs), 783 (Schirdewan), 784 (Peter-Hansen and others), 785 (Strugariu and others), 786 (Radev and others), 787 (Garicano and others), 788 (Garicano and others), 789 (Garicano and others), 790 (Peter-Hansen and others), 791 (Peter-Hansen and others), 160 (Rapporteurs), 161 (Rapporteurs), 793 (Peter-Hansen and others), AM 800 (Pereira), 163 (Rapporteurs), 164 (Rapporteurs), 801 (Peter-Hansen and others), 165 (Rapporteurs), 803 (Peter-Hansen and others), 804 (Schirdewan), 805 (Peter-Hansen), 166 (Rapporteurs), 807 (Peter-Hansen and others), 808 (Garicano and others), 167 (Rapporteurs), 809 (Peter-Hansen and others), 168 (Rapporteurs), 810 (Peter-Hansen and others), 169 (Rapporteurs), 811 (Peter-Hansen and others), 812 (Peter-Hansen), 652 (Garicano and others).

**AMs falling:** AM 649 (Schirdewan), 655 (Schirdewan), 662 (Garicano), 664 (Schirdewan), 676 (Daly), 677 (Garicano and others), 678 (Daly), 683 (Schirdewan), 684 (Schirdewan), 690

(Schirdewan), 692 (Daly), 696 (Peter-Hansen and others), 697 (Schirdewan), 698 (Radev and others), 704 (Jaki and others), 708 (Radev and others), 715 (Peter-Hansen and others), 716 (Regner), 717 (Schirdewan), 719 (Peter-Hansen and others), 720 (Daly), 726 (Daly), 733 (Ressler), 734 (Jaki), 735 (Seekatz and others), 736 (Daly), 737 (Peter-Hansen and others), 743 (Ressler), 742 (Garicano and others), 744 (Jaki and others), 745 (Seekatz), 746 (Strugariu and others), 753 (Garicano and others), 759 (Daly), 769 (Zanny), 774 (Daly), 162 (Rapporteurs), 799 (Peter-Hansen and others), 792 (Daly), 794 (Schirdewan), 795 (Jaki), 796 (Schirdewan), 797 (Garicano and others), 798 (Garicano and others), 802 (Schirdewan), 806 (Peter-Hansen), 813 (Daly)

### **Recitals 45-54**

**AMs covered :** 32 (rapporteurs), 302 (Radev & others), 303 (Peter-Hansen & other), 305 (Pereira), 35 (rapporteurs), 306 (Peter-Hansen and other), 36 (rapporteurs), 307 (Tang), 308 (Pereira), 37 (rapporteurs), 310 (Peter-Hansen & other), 39 (rapporteurs), 312 (Strugariu & others), 40 (rapporteurs), 41 (rapporteurs), 314 (Pereira), 42 (rapporteurs), 316 (Pereira), 317 (Strugariu & others)

**AMs falling:** 304 (Jaki & other), 309 (Zanni & others), 311 (Peter-Hansen & other), 313 (Garicano & others), 315 (Garicano & others)

## **CHAPTER III**

### **FIUs**

#### *Article 17*

#### *Establishment of FIUs*

1. Each Member State shall establish an FIU in order to prevent, detect, **report** and effectively combat money laundering and terrorist financing. (AM 127, 650)
2. The FIU shall be the single central national unit responsible for receiving and analysing suspicious transactions and other information relevant to money laundering, its predicate offences or terrorist financing submitted by obliged entities in accordance with Article 50 or reports submitted by obliged entities in accordance with Article 59(4), point (b), of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* **and other information relevant to money laundering, its predicate offences or terrorist financing, as well as** by customs authorities pursuant to Article 9 of Regulation (EU) 2018/1672. (AM 651)
- 2a. ***FIUs shall participate in, and contribute to, the activities of the Support and Coordination Mechanism of FIUs, in accordance with [please insert reference to the AMLA Regulation]. The FIUs shall cooperate effectively with AMLA in accordance with Article 22a of this Directive.*** (AM 652)
3. The FIU shall be responsible for disseminating the results of its analyses and any additional relevant information to other competent authorities where there are grounds to suspect money laundering, its predicate offences or terrorist financing. It shall be able to obtain additional information from obliged entities. The FIU's financial analysis function shall consist of the following:



- (a) an operational analysis which focuses on individual cases and specific targets or on appropriate selected information, depending on the type and volume of the disclosures received and the expected use of the information after dissemination;
- (b) a **continuous** strategic analysis addressing money laundering and terrorist financing trends and patterns. (AM 128)

By ~~[1 year~~ **2 years after the date of transposition entry into force of this Directive]**, AMLA shall issue guidelines addressed to FIUs on the nature, features and objectives of operational and of strategic analysis **and, in particular, on the need to further provide these analyses to the competent authorities responsible for combating money laundering, related predicate offences and terrorist financing.** (AM 129, 657, 658)

- 4. Each FIU shall be operationally independent and autonomous, which means that it shall have the authority and capacity to carry out its functions freely, including the ability to take autonomous decisions to analyse, request and, **in accordance with paragraph 3**, disseminate specific information **in accordance with applicable Union law**. It shall be free from any undue political, government or industry influence or interference. (AM 130, 659, 660)

When a FIU is located within the existing structure of another authority, the FIU's core functions shall be independent and operationally separated from the other functions of the host authority.

- 5. Member States shall provide their FIUs with adequate financial, human and technical resources in order to fulfil their tasks. FIUs shall be able to obtain and deploy the resources needed to carry out their functions. -(AM 131)
- 5a. **Member States shall ensure that the staff of their FIUs maintain high professional standards, including high professional standards of confidentiality and data protection, and be of high integrity and appropriately skilled, including in detecting biases in big data sets and in the ethical use of such. Their staff shall not be placed in a situation in which a conflict of interest exists or could be perceived to exist. AMLA shall adopt guidelines to specify the circumstances in which such a conflict of interest exists or could be perceived to exist.** (AM 132, 661, 665).

Member States shall ensure that FIUs have rules in place governing the security and **protection of personal data and confidentiality of information, including in transmission of data provided for in paragraph 3.** (AM 666, 653)

- 7. Each Member State shall ensure that its FIU is able to make arrangements or engage independently with other domestic competent authorities **and with Union bodies, offices and agencies involved in the framework of combating money laundering, related predicate offences and terrorist financing** pursuant to Article 45 on the exchange of information. (AM 667, 668, 669) **[reference to specific Union bodies moved to article 45]**
- 7a. **AMLA shall coordinate the organisation of periodical peer reviews of FIUs for the purpose of assessing whether the requirements set out in this Article have been fulfilled, including having adequate financial, human and technical resources, such as appropriate funding and resources taking into account the relevant context, in accordance with article 37a of [please insert reference to AMLA Regulation]. Where a peer review indicates substantial shortcomings in the operation of an FIU, AMLA shall issue recommendations to the FIU and the Member State concerned to address the shortcomings identified. The recommendations shall be transmitted to the**

*European Parliament, the Council and the Commission. (AM 133, 670, 671, 672, 673).*

#### **Article 17a**

##### **Fundamental Rights Officer**

**1. Every FIU shall designate a Fundamental Rights Officer. The Fundamental Rights Officer may be a member of the existing staff of the FIU who received special training in fundamental rights law and practice.**

**2. The Fundamental Rights Officer shall perform the following tasks:**

**(a) advise the FIU where he or she deems it necessary or where requested on activities of the FIU, which have impact on fundamental rights, without impeding or delaying those activities;**

**(b) support the FIU's staff in ensuring compliance with fundamental rights;**

**(c) provide non-binding opinions on working arrangements relevant to its field of competence, with the view to enhance FIU's compliance with fundamental rights;**

**(d) inform the management about possible violations of fundamental rights in the course of the FIU's activities;**

**(e) promote the FIU's respect of fundamental rights in the performance of its tasks and activities;**

**3. The FIU shall ensure that the Fundamental Rights Officer does not receive any instructions regarding the exercise of his or her tasks. This should not prevent the Fundamental Rights Officer to seek guidance from relevant actors on the performance of his or her tasks where deemed necessary.**

**4. The Fundamental Rights Officer shall report directly to the management of the FIU.**  
**(AM 663)**

#### *Article 18*

##### *Access to information*

1. Member States shall ensure that FIUs, regardless of their organisational status, have **access to the information that they require to fulfil their tasks properly. This shall include financial, administrative and law enforcement information. Member States shall ensure that their FIUs have at least:** (AM 674, 708)

(a) immediate and, ~~with the exception of point (ii),~~ direct access to the following financial information: (AM 679, 680, 681, 682)

(i) information contained in the national centralised automated mechanisms in accordance with Article 14;

~~(ii) information on wire transfers;~~(AM 685, 686, 687)

(iii) information from obliged entities, *including information on wire transfers;* (AM 688, 689)

(iv) information on mortgages and loans;

(v) information contained in the national currency and currency exchange databases;

(vi) information on securities;

(b) immediate and, with the exception of points *(ia)* and (xiv), direct access to the following administrative information:

(i) fiscal data, including data held by tax and revenue authorities;

*(ia) information referred to in Article 8(3a) of Directive 2011/16/EU*<sup>11</sup> (AM 213, 949)

(ii) *the information from the single access point as referred to in article 16 relating to* national real estate registers, *land registers* or electronic data retrieval systems and land and cadastral registers; (AM 134, 693, 694, 695)

*(iia) the information referred to in Article 16b;* (AM 696)

(iii) national citizenship and population registers of natural persons;

(iv) national passports and visas registers;

(v) cross-border travel databases;

(vi) commercial databases, including business and company registers and PEP databases;

(vii) national motor vehicles, aircraft and watercraft registers;

(viii) national social security registers;

(ix) customs data, including cross-border physical transfers of cash;

(x) national weapons and arms registers;

(xi) national beneficial ownership registers;

(xii) data available through the interconnection of beneficial ownership registers in accordance with Article 10(11).

(xiii) registers on non-profit organisations;

(xiv) information held by national financial supervisors and regulators, in accordance with Article 45 and Article 50(2);

(xv) databases storing data on CO<sub>2</sub> emission trading established pursuant to Commission Regulation (EU) 389/2013<sup>12</sup>.

(xvi) information on annual financial statements by companies;

(xvii) national migration/immigration registers;

(xviii) information held by commercial courts;

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<sup>11</sup> *Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 064 11.3.2011, p. 1).*

<sup>12</sup> Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 (OJ L 122, 3.5.2013, p.1-59).

(xix) information held in insolvency databases and by insolvency practitioners;

(via) **information on public procurements or contracts (AM 691).**

(c) direct **or indirect** ~~or indirect~~ access to the following law enforcement information: (AMs 135, 698, 699, 701, 702, 703, 705, 706, 707, 708, **709, 711, 718**)

(i) any type of information or data which is already held by competent authorities in the context of preventing, detecting, investigating or prosecuting criminal offences;

(ii) any type of information or data which is held by public authorities or by private entities in the context of preventing, detecting, investigating or prosecuting criminal offences and which is available to competent authorities without the taking of coercive measures under national law.

The information referred to in point (c) ~~may~~ **shall** include criminal records, information on investigations, information on the freezing or seizure of assets, **including in the context of economic or targeted financial sanctions**, or on other investigative or provisional measures and information on convictions and on confiscations. (AM 136, 710)

~~Where there are objective grounds to believe that the provision of information referred to in point (c) would have an adverse effect on ongoing investigations or analyses, or, in exceptional circumstances, where the disclosure would be manifestly disproportionate to the legitimate interests of a natural or legal person in respect of which it has been requested or irrelevant with regard to the purposes for which it has been requested, the law enforcement authority may only refuse the request for information by means of a written and duly justified response. (AM 709, 711, 718)~~

2. Where the information referred to in paragraph 1, points (a), (b) and (c), is not stored in databases or registers, Member States shall take the necessary measures to ensure that FIUs can obtain that information by other means **in a timely manner**. (AM 712, 713, 714)
3. In the cases where the FIUs are provided with indirect access to information, the requested authority shall respond to the request in a timely manner.
4. In the context of its functions, each FIU shall be able to request, obtain and use information from any obliged entity to perform its functions pursuant to Article 17(3), even if no prior report is filed pursuant to Article 50(1), point (a), or Article 51(1) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]. Obligated entities shall not be obliged to comply with requests for information made pursuant to this paragraph when they concern information obtained in the situations referred to in Article 51(2) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final].

## Article 19

### Responses to requests for information

1. Member States shall ensure that FIUs respond in a timely manner, **and in any case no later than in seven days**, to reasoned requests for information by other competent authorities in their respective Member State or Union authorities competent for investigating or prosecuting criminal activities when such requests for information are motivated by concerns relating to money laundering, its predicate offences or terrorist financing or when this information is necessary for the competent authority to **freeze, seize or confiscate assets or to** perform its tasks under this Directive. The decision on

conducting the dissemination of information shall remain with the FIU. (AM 721, 722, 723)

Where there are objective grounds for assuming that the provision of such information would have a negative impact on ongoing investigations or analyses, or, in exceptional circumstances, where disclosure of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or irrelevant with regard to the purposes for which it has been requested, the FIU ***may only refuse*** the request for information ***by means of a written and duly justified response. Such a response shall also be transmitted to AMLA for the purpose of identifying trends and any possible impediments to cooperation.*** (AM 137, 724, 725)

2. Competent authorities ***and AMLA*** shall provide feedback to the FIU about the use made of ***and the usefulness of*** the information provided in accordance with this Article ***and article 17, and about the outcome of the investigations performed on the basis of that information.*** Such feedback shall be provided as soon as possible and in any case, at least on an annual basis, in such a way as to inform the FIU about the actions taken by the competent authorities on the basis of the information provided by the FIU and allow the FIU to execute ***and improve*** its operational analysis function. (AM 727, 728)

#### Article 19a

##### Dissemination of information

***Member States shall ensure that their FIUs disseminate the results of their analyses and any additional relevant information to other competent authorities where there are grounds to suspect money laundering, its predicate offences or terrorist financing.***

***Member States shall ensure that their FIUs, on a case by case basis, inform competent authorities in their respective Member State or Union authorities competent to investigate or prosecute criminal activities where there is evidence of money laundering, its predicate offences or terrorist financing or where that information is necessary for the competent authority to freeze, seize or confiscate assets or to perform its tasks under criminal law unless the provision of such information would have a negative impact on ongoing investigations or analyses.***

***The decision to disseminate information shall remain with the FIU.*** (AM 729)

***Dissemination of information as referred to in this Article, shall be conducted via secure communication channels, ~~using end-to-end encryption.~~*** (AM 653, 656)]

#### Article 20

***Suspension ~~or withholding of consent to~~ of or prohibition to carry out a transaction and suspension of an account*** (AM 138, 730)

1. Member States shall ensure that FIUs are empowered to take urgent action, ~~directly or indirectly~~, where there is a suspicion that a transaction is related to money laundering or terrorist financing, to suspend or ~~withhold consent to~~ ***prohibit*** a transaction that is proceeding ***in order to analyse the transaction, confirm the suspicion and disseminate the results of the analysis to the competent authorities and, where relevant, AMLA. In cases covered by Article 52(1) [please insert reference to AML Regulation], such suspension shall be imposed on the obliged entity, within 48 hours of receiving the suspicious transaction report.*** Member States shall ensure that subject



to national procedural safeguards, the transaction is suspended for a period of a maximum of 15 calendar days from the day of the imposition of such suspension to the obliged entity. *Member States shall ensure that such suspensions may be extended for reasons which are external to the FIU's analysis, in particular, the lack of cooperation from the obliged entity.* (AM 139, 731, 732, 734, 739)

The FIU shall be empowered to impose such suspension at the request of an FIU from another Member State **within 48 hours** **and it shall be imposed within 48 hours of the request**, for the periods and under the conditions specified in the *applicable Union law and national law of the FIU receiving the request. Member States shall ensure that subject to national procedural safeguards, the transaction is suspended for a period of maximum 15 calendar days from the day of the imposition of such suspension to the obliged entity.* (AM 140, 738, 750, 751)

- 1a. *Where an FIU decides to suspend or prohibit a transaction that concerns another Member State, it shall promptly inform the FIU of that Member State.*
- 1b. *Where an FIU decides to suspend or prohibit a transaction in accordance with paragraph 1, this information shall be made available to other FIUs through FIU.net.* (AM 141, 740)
- 1c. *FIUs shall be able to use state-of-the-art technology to match their data with other FIUs' data of suspended or prohibited transactions in an anonymous manner.* (AM 142, 753)
- 2. Where there is a suspicion that several transactions involving a bank **account**, a payment account, **or custodial crypto-asset wallet** are related to money laundering, **related predicate offences**, or terrorist financing, Member States shall ensure that the FIU is empowered to take urgent action, ~~directly or indirectly~~, to suspend **the business relationship or** the use of a bank **account**, payment account **or custodial crypto-asset wallet** in order to **perform the analyses**, confirm the suspicion and disseminate the results of the analysis to the competent authorities. (AM 144, 742)

Such suspension shall be imposed on the obliged entity within 48 hours of receiving the suspicious transaction report and immediately notified to the competent judicial authority. Member States shall ensure that the use of that bank or payment account is suspended for a period of a maximum of 5 days from the day of the imposition of the suspension, **or for a period of maximum of 10 days in case the FIU receives indication about an ongoing mutual legal assistance request in cross-border cases**. Member States shall ensure that any extension of such suspension shall be authorized by the competent judicial authority **and notified to the concerned person in order to allow challenging the suspension before a court in accordance with paragraph 3.**

*The FIU shall be empowered to impose such suspension at the request of an FIU from another Member State within 48 hours and it shall be imposed within 48 hours of the request for the periods and under the conditions specified in the applicable Union law and national law of the FIU receiving the request. Member States shall ensure that subject to national procedural safeguards, the bank or payment account or custodial crypto-asset wallet is suspended for a period of maximum 5 calendar days from the day of the imposition of such suspension to the obliged entity, or for a period of maximum of 10 days in case the FIU receives indication about an ongoing mutual legal assistance request in cross-border cases.* (AM 750) ~~*In such an event, the requesting FIU from another Member States shall be informed promptly about the measures taken by the FIU which received the request.*~~ (AM 145, 752). **Member States shall ensure that any extension of such suspension shall be**

**authorized by the competent judicial authority and notified to the concerned person in order to allow challenging the suspension before a court in accordance with paragraph 3.**

- 2a. Where an FIU decides to suspend the use of a bank or payment account or custodial crypto-asset wallet that concerns another Member State, it shall promptly inform the FIU of that Member State. (AM 146)**
- 2b. Where an FIU decides to suspend a bank or payment account or custodial crypto-asset wallet in accordance with paragraph 1, this information shall be made available to other FIUs through FIU.net. (AM 147)**
- 2c. FIUs shall be able to use state-of-the-art technology to match their data with other FIUs' data of suspended banks, payment accounts or crypto-asset wallets in an anonymous manner. (AM 148, 753)**
- 3. Member States shall provide for the effective possibility for the person whose bank account, payment account or custodial crypto-asset wallet is suspended to challenge the suspension before a court in accordance with procedures provided for in national law. (747)
- 3a. FIUs shall be empowered to monitor, during a specified period, the transactions or activities that are being carried out through one or more identified bank accounts or other business relationships with regard to persons who present a significant risk of ML/TF. FIUs shall be empowered to give instructions to obliged entities in order to ensure that obliged entities carry out such specific monitoring and report the results to the competent FIU. (AM 748)**
- 3b. The FIU shall be empowered to impose the monitoring measures referred to in paragraph 3a at the request of an FIU from another Member State for the periods and under the conditions specified in the applicable Union law and national law of the FIU receiving the request.**
- 3c. When an FIU imposes the suspensions or a monitoring measure referred to in paragraphs 1, 2 and 3a at the request of an FIU from ~~another Member~~ another Member State, the requesting FIU shall be informed promptly about the measures taken by the FIU which received the request (AM 751).**
- 4. FIUs shall be empowered to impose the suspensions and monitoring measures referred to in paragraphs 1, 2 and 3a, directly or indirectly, at the request of an FIU from ~~another Member State~~ a third country under the conditions specified in the national law of the FIU receiving the request. (AM 150, 751)
- 4b. By [2 years after the date of entry into force of this Directive], AMLA shall develop draft implementing technical standards and submit them to the Commission for adoption. Those draft implementing technical standards shall specify the format to be used for the exchange of the information referred to in paragraphs 1a, 1b, 2a and 2b and set the criteria for determining whether a suspension concerns another Member State. The Commission is empowered to adopt the implementing technical standards referred to in this paragraph in accordance with Article 42 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]. (AM 143, 149, 741, 754)**

## Article 21

### Feedback by FIU

1. Each Member State shall ensure that its FIU issues a yearly report on its activities. The report shall contain statistics on:
  - (a) suspicious transaction reports submitted by obliged entities;  
**(aa) follow up given by the FIU to suspicious transactions reports it has received;** (AM 755)
  - (b) disclosures by supervisors and beneficial ownership registers;
  - (c) disseminations to competent authorities;  
**(ca) feedback received from competent authorities (AM 756);**
  - (d) requests submitted to and received from other FIUs;
  - (e) data on cross-border physical transfers of cash submitted by customs authorities.  
**(ea) requests submitted to and received from competent authorities designated under Article 3 of Directive 2019/1153 of the European Parliament and of the Council, Europol and the European Public Prosecutor's office (EPPO).** (AM 151, 758)
  - (eb) human resources allocated.** (AM 757)

The report referred to in the first subparagraph shall also contain information on the trends and typologies identified in the files disseminated to other competent authorities.

FIUs shall disseminate the report to obliged entities. Such report shall be made public **at the date** of its dissemination, except for the elements of the report which contain classified information. The information contained therein shall not permit the identification of any natural or legal person. (760)

2. Member States shall ensure that FIUs provide obliged entities with feedback on the reports of suspected money laundering or terrorist financing **at least twice a year. FIUs shall provide feedback on operational and strategic analysis.** Such feedback shall cover at least the quality of the information provided, **how the information was used**, the timeliness of reporting, the description of the suspicion, the documentation provided at submission stage **and potential money laundering or terrorist financing typologies not covered by the obliged entity's report.**(AM 761, 762, 764)

2a. The FIU shall provide feedback at least once per year, ~~whether provided to the~~ **to each** category of obliged entity ~~or to groups of obliged entities, taking into consideration the overall number of suspicious transactions reported by the obliged entities as referred to in Article 3, points (1), (2) and (3)(f), (g), (h) and (k), of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final].~~ (AM 152, 766)

**The FIU shall provide a comparative analysis on the quality of suspicious transaction reports by category of obliged entities referred to in Article 3, point (3) points (a)-(e), (i), (j) and (l), of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], taking into consideration the overall number of suspicious transactions reported by those obliged entities.** (AM 153, 766)

Such feedback, **including a comparative assessment between obliged entities and groups or categories of obliged entities**, shall also be ~~made available~~ **sent** to supervisors to allow them to perform risk-based supervision in accordance with Article 31. (AM 154, 770)

**FIUs shall provide, at least annually, to all obliged entities within their jurisdiction, strategic feedback about financial intelligence priorities and trends in money laundering and terrorist financing.** (AM 771)

The obligation to provide feedback shall not jeopardise any ongoing analytical work carried out by the FIU or any investigation or administrative action subsequent to the dissemination by the FIU, and shall not affect the applicability of data protection and confidentiality requirements.

3. Member States shall ensure that FIUs provide customs authorities with timely feedback on the effectiveness of and follow-up to the information submitted pursuant to Article 9 of Regulation (EU) 2018/1672.

## *Article 22*

### *Cooperation between FIUs*

Member States shall ensure that FIUs cooperate with each other and with their counterparts in third countries to the greatest extent possible ***and in a timely manner***, regardless of their organisational status. ***To that end, they shall provide effective arrangements for cross-border and international cooperation.*** (AM 773)

***Member States shall provide their FIUs with adequate financial, human and technical resources in order to ensure effective and efficient cooperation.*** (AM 772)

## *Article 22a*

### *Cooperation with AMLA*

***Member States shall ensure that FIUs participate in, and contribute to, the activities of AMLA in accordance with the provisions of Regulation [please insert reference –proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].*** (AM 652, 812)

## *Article 23*

### *Protected channels of communication*

1. A system for the exchange of information between FIUs of the Member States shall be set up ('FIU.net'), ***without any delay***. The system shall ensure ***a secure communication and exchange of information by using end-to-end encryption*** and shall be capable of producing a written record under conditions that allow ascertaining authenticity. ***If so decided by AMLA***, that system may also be used for communications with FIUs counterparts in third countries and with other authorities and Union bodies. FIU.net shall be managed by AMLA. ***The system shall serve as a centralised information exchange hub between FIUs and AMLA.*** (AM 155, , 776, 779)
2. Member States shall ensure that ***FIUs*** exchange information pursuant to Article 24 ***and 25*** using the FIU.net. In the event of ***temporary*** technical failure of the FIU.net, the information shall be transmitted ***without any delay through equivalent protected channels of communication*** ensuring a high level of data security ***and data protection, in accordance with criteria identified by AMLA by means of guidelines.*** (AM 777, 778, 779, 156)

Exchanges of information between FIUs and their counterparts in third countries shall also take place through protected channels of communication.

3. Member States shall ensure that, in order to fulfil their tasks as laid down in this Directive *and in applicable Union law*, their FIUs *participate, use and* cooperate to *the maximum extent* in the application of state-of-the-art technologies, in particular those *developed and managed by AMLA* in accordance with ~~their national law~~ *Article 5(5), point (e), and Article 37 of Regulation [please insert reference to AMLA Regulation]*. (AM 157, 780, 781)
- 3a. *Member States shall ensure that their FIUs are able to use FIU.net for the purpose of matching the data with data of other FIUs in an anonymous manner. Member States shall ensure that their FIUs are able to use FIU.net for the purposes of matching subject-matter data with Europol databases.*(AM 158)
- 3b. *Following a peer review in accordance with Article 17(7a), AMLA may suspend access to FIU.net for a specific FIU where the report of the peer review concludes that requirements relating to the independence, integrity, professionalism, confidentiality or security of that FIU, as set out in Article 17, have not been fulfilled. The decision to impose such suspension shall be taken by AMLA in accordance with the the provisions referred to in Article xx [please insert reference to AMLA Regulation][placeholder General Board in the FIU's composition by unanimity], as the affected FIU does not vote. With the decision of suspension, AMLA shall issue an assessment which explains and indicates the follow-up measures to be complied with, in order for the suspension to be lifted. AMLA shall evaluate the actions taken by the FIU concerned no later than 3 months after issuing the decision of suspension.* (AM 159, 783, 784, 785, 786)

#### *Article 23a (new)*

##### *Transmission of information by obliged entities to FIUs via FIU.net*

1. *AMLA shall ensure that FIU.net enables obliged entities to submit suspicious transaction and activity reports to FIUs concerned, in accordance with this Article, through protected channels of communication.* (AM 775)
2. *By ... [5 years after entry into force of this Directive], AMLA shall ensure that obliged entities are able to use FIU.net to transmit information referred to in Article 50 (1) of [please insert reference to AMLR] to the FIU of the Member State in whose territory the obliged entity transmitting the information is established and to any other FIU which is concerned by such report pursuant to Article 24 (1). By the same date, Member States shall ensure that FIUs may request obliged entities to transmit the information referred to in Article 50 (1) [please insert reference to AMLR] through FIU.Net, until its use becomes mandatory under Paragraph 3.*
3. *Member States shall ensure that transmission of information as referred to in Paragraph 2 becomes mandatory for obliged entities by [6 years after entry into force of this Directive].* (AM782)



## Article 24

### *Exchange of information between FIUs*

1. Member States shall ensure that FIUs exchange, spontaneously or upon request, any information that may be relevant for the processing or analysis of information by the FIU related to money laundering, its predicate offences, or terrorist financing, and the natural or legal person involved, ***regardless of the type of predicate offences that may be involved, and*** even if the type of predicate offences that may be involved is not identified at the time of the exchange. (AM 787)

A request shall contain the relevant facts, background information, reasons for the request and how the information sought will be used.

When an FIU receives a report pursuant to Article 50(1), the first subparagraph, point (a), of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* which concerns another Member State, it shall promptly forward the report, or all the relevant information obtained from it, to the FIU of that Member State.

2. By *[2 years after the date of entry into force of this Directive]*, AMLA shall develop draft implementing technical standards and submit them to the Commission for adoption. Those draft implementing technical standards shall specify the format to be used for the exchange of the information referred to in paragraph 1 ***and shall determine the relevant factors to be taken into consideration when determining whether a report pursuant to Article 50(1), first subparagraph, point (a), of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] concerns another Member State, the procedures to be put in place when forwarding and receiving that report, and the follow-up to be done.*** (788, 790, 791, 160, 161)
3. The Commission is empowered to adopt the implementing technical standards referred to in paragraph 2 of this Article in accordance with Article 42 of Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]*.
4. ~~By *[1 year after the date of transposition of this Directive]*, AMLA shall issue guidelines addressed to FIUs on the relevant factors to be taken into consideration when determining whether a report pursuant to Article 50(1), the first subparagraph, point (a), of Regulation [please insert reference – proposal for Anti Money Laundering Regulation – COM/2021/420 final] concerns another Member State, the procedures to be put in place when forwarding and receiving that report, and the follow-up to be given.~~ (AM 789)
5. Member States shall ensure that the FIU to whom the request is made is required to use the whole range of its available powers which it would normally use domestically for receiving and analysing information when it replies to a request for information referred to in paragraph 1 from another FIU.

When an FIU seeks to obtain additional information from an obliged entity established in another Member State which operates on the territory of its Member State, the request shall be addressed to the FIU of the Member State in whose territory the obliged entity is established. That FIU shall obtain information in accordance with Article 50(1) of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* and

transfer the answers promptly. ***Obliged entities shall provide information to their respective competent FIUs, which shall then forward the requested information to the requesting FIU.*** (AM 749)

6. Member States shall ensure that where an FIU is requested to provide information pursuant to paragraph 1, it shall respond to the request ***and provide the requested information*** as soon as possible and in any case no later than seven days after the receipt of the request. In exceptional, duly justified cases, this time limit may be extended to a maximum of 14 calendar days. Where the requested FIU is unable to obtain the requested information, it shall inform the requesting FIU thereof. (AM793)
7. Member States shall ensure that in exceptional, justified and urgent cases and, by way of derogation from paragraph 6, where pursuant to paragraph 1 an FIU is requested to provide information which is either held in a database or registry directly accessible by the requested FIU or which is already in its possession, the requested FIU shall provide that information no later than 24 hours after the receipt of the request.

If the requested FIU is unable to respond within 24 hours or cannot access the information directly, it shall provide a justification. Where the provision of the information requested within the period of 24 hours would put a disproportionate burden on the requested FIU, it may postpone the provision of the information. In that case the requested FIU shall immediately inform the requesting FIU of this postponement and shall provide the requested information as soon as possible, but not later than within three calendar days.

8. An FIU may refuse to exchange information only in exceptional circumstances where the exchange could be contrary to fundamental principles of its national law. Those exceptional circumstances shall be specified in a way which prevents misuse of, and undue limitations on, the free exchange of information for analytical purposes.

By ... *[1 year after the date of transposition of this Directive]*, Member States shall notify to the Commission the exceptional circumstances referred to in the first subparagraph. Member States shall update such notifications where changes to the exceptional circumstances identified at national level occur.

***By ... [18 months after the date of transposition of this Directive], the Commission shall publish a report outlining notifications of exceptional circumstances referred to in the first subparagraph. The Commission shall publish additional reports in case of updates to those notifications. The Commission shall assess in that report whether or not the exceptional circumstances notified are justified. (AM 162)***

## Article 25

### Joint analyses

1. Member States shall ensure that their FIUs are able to carry out joint analyses of suspicious transactions and activities.
2. For the purpose of paragraph 1, the relevant FIUs, assisted by AMLA in accordance with Article 33 of Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]*, shall set up a joint analysis team for a specific purpose and limited period, which may be extended by mutual consent, to carry out operational analyses of suspicious transactions or activities involving one or more of the FIUs setting up the team.
3. A joint analysis team may be set up where:

- (a) an FIU's operational analyses require difficult and demanding analyses having links with other Member States;
- (b) a number of FIUs are conducting operational analyses in which the circumstances of the case ***justify or merit*** coordinated, concerted action in the Member States involved. (AM 800, 163)
- (ba) an FIU deems it appropriate and useful for the purposes of ensuring that specific analyses and the results thereof are of better quality, exploiting potential synergies and the possibility of using information from different sources, or obtaining comprehensive information concerning the anomalous activities underlying the analysis in question. (AM 164, 801)***

A request for the setting up of a joint analysis team may be made by any of the FIUs concerned ***or AMLA, under the conditions laid down in paragraph 3a.*** (AM 165, 803, 804)

- 3a. ***Provided that no FIU has*** submitted a request for the setting up of a joint analysis team, AMLA may set up such a team on its own initiative (AM 805) ***where it identifies cases in which:***
  - (a) an FIU's operational analyses require difficult and demanding analyses having links with other Member States;***
  - (b) a number of FIUs are conducting operational analyses where the circumstances necessitate coordinated, concerted action in the Member States involved;***
  - (c) it has received information indicating a suspicion of money laundering or financing of terrorism that could affect the internal market or relate to cross-border activities. (AM 166)***
- 4. Member States shall ensure that the member of their FIU allocated to the joint analysis team is able, in accordance with his or her national law and within the limits of his or her competence, to provide the team with information available to its FIU for the purpose of the analysis conducted by the team.
- 5. Where the joint analysis team needs assistance from an FIU other than those which are part of the team, it might request that other FIU to:
  - (a) join the joint analysis team;
  - (b) submit financial intelligence and financial information to the joint analysis team.

## Article 26

### *Use by FIUs of information exchanged between them*

Information and documents received pursuant to Articles 22 and 24 shall be used for the accomplishment of the FIU's tasks as laid down in this Directive. When exchanging information and documents pursuant to Articles 22 and 24, the transmitting FIU may impose restrictions and conditions for the use of that information. The receiving FIU shall comply with those restrictions and conditions.

Member States shall ensure that FIUs designate at least one contact person or point to be responsible for receiving requests for information from FIUs in other Member States.

## Article 27

### *Consent to further dissemination of information exchanged between FIUs*

1. Member States shall ensure that the information exchanged pursuant to Articles 22 and 24 is used only for the purpose for which it was sought or provided and that any dissemination of that information by the receiving FIU to any other authority, agency or department, or any use of this information for purposes beyond those originally approved, is made subject to the prior consent by the FIU providing the information. . (AM 807)
2. Member States shall ensure that the requested FIU's prior consent to disseminate the information to competent authorities is granted promptly and to the largest extent possible, regardless of the type of predicate offences ***and whether or not the predicate offence has been identified***. The requested FIU shall not refuse its consent to such dissemination unless this would fall beyond the scope of application of its AML/CFT provisions or could lead to impairment of an investigation, or would otherwise not be in accordance with fundamental principles of national law of that Member State. Any such refusal to grant consent shall be appropriately explained. The cases where FIUs may refuse to grant consent shall be specified in a way which prevents misuse of, and undue limitations to, the dissemination of information to competent authorities. (808)
  - 2a. ***By [1 year after the date of transposition of this Directive], Member States shall notify to the Commission the exceptional circumstances in which dissemination would not be in accordance with fundamental principles of national law referred to in paragraph 2. Member States shall update such notifications where the exceptional circumstances in which dissemination would not be in accordance with fundamental principles of national law change.*** (AM 167, 809)
  - 2b. ***By [18 months after the date of transposition of this Directive], the Commission shall publish a report outlining the notifications of exceptional circumstances referred to in the paragraph 2a. The Commission shall publish additional reports in case of updates to those notifications. The Commission shall assess in those reports whether or not the notified exceptional circumstances are justified or not.*** (AM 168, 810)

## Article 27a

### *Transmission of information to EPPO*

***Where there are grounds to suspect money laundering or its associated predicate offences in respect of which the EPPO could exercise its competence or has exercised its competence in accordance with Article 22 or Article 25(2) and (3) of Council Regulation (EU) 2017/1939<sup>1a</sup>, Member States shall ensure that the FIU disseminates the following information in accordance with the principles laid down in [EPPO Regulation]:***

***(a) relevant information; and***

*(b) the results of its analyses.*

~~*(c) any additional relevant information*~~ (AM 169, 811)

## Article 28

### *Effect of criminal law provisions*

Differences between national law definitions of predicate offences shall not impede the ability of FIUs to provide assistance to another FIU and shall not limit the exchange, dissemination and use of information pursuant to Articles 24, 26 and 27.

### **Recitals 45-54**

**AMs covered :** 32 (rapporteurs), 302 (Radev & others), 303 (Peter-Hansen & other), 305 (Pereira), 35 (rapporteurs), 36 (rapporteurs), 307 (Tang), 308 (Pereira), 37 (rapporteurs), 310 (Peter-Hansen & other), 39 (rapporteurs), 312 (Strugariu & others), 40 (rapporteurs), 41 (rapporteurs), 314 (Pereira), 313 (Garicano & others), 315 (Garicano & others) ,42 (rapporteurs), 316 (Pereira), 317 (Strugariu & others)

**AMs falling:** 304 (Jaki & other), 306 (Peter-Hansen and other) 309 (Zanni & others), 311 (Peter-Hansen & other)

### **Recitals (45)-(54)**

(45) All Member States have, or should, set up operationally independent and autonomous FIUs to collect and analyse the information which they receive with the aim of establishing links between suspicious transactions and underlying criminal activity in order to prevent and combat money laundering and terrorist financing. The FIU should be the single central national unit responsible for the receipt and analysis of suspicious transaction reports, reports on cross-border physical movements of cash *through the customs information system* and on payments in cash above a certain threshold as well as other information relevant to money laundering, its predicate offences or terrorist financing submitted by obliged entities. Operational independence and autonomy of the FIU should be ensured by granting the FIU the authority and capacity to carry out its functions freely, including the ability to take autonomous decisions as regards analysis, requests and dissemination of specific information. In all cases, the FIU should have the independent right to forward or disseminate information to competent authorities. The FIU should be provided with adequate financial, human and technical resources, in a manner that secures its autonomy and independence and enables it to exercise its mandate effectively. The FIU should be able to obtain and deploy the resources needed to carry out its functions, on an individual or routine basis, free from any ~~unjustifiable or~~ undue political, government or industry influence or interference, which might compromise its operational independence. *In order to assess the fulfilment of those requirements and identify weaknesses and best practices, AMLA should be empowered to coordinate the organisation of peer reviews of FIUs.* (AM 32, 302)



- (45a) *FIU staff should be of high integrity and appropriately skilled, including in detecting biases in and in the ethical use of big data sets, and maintain high professional standards. FIU staff should not be in a situation where a conflict of interest exists or could be perceived to exist. AMLA should adopt guidelines to address situations of conflict of interest. (AM 33)*
- (46) FIUs play an important role in identifying the financial operations of terrorist networks, especially cross-border, and in detecting their financial backers. Financial intelligence might be of fundamental importance in uncovering the facilitation of terrorist offences and the networks and schemes of terrorist organisations. FIUs maintain significant differences as regards their functions, competences and powers. The current differences should however not affect an FIU's activity, particularly its capacity to develop preventive analyses in support of all the authorities in charge of intelligence, investigative and judicial activities, and international cooperation. In the exercise of their tasks, it has become essential to identify the minimum set of data FIUs should have swift access to and be able to exchange without impediments with their counterparts from other Member States. In all cases of suspected money laundering, its predicate offences and in cases involving the financing of terrorism, information should flow directly and quickly without undue delays. It is therefore essential to further enhance the effectiveness and efficiency of FIUs, by clarifying the powers of and cooperation between FIUs. *FIUs should cooperate with each other to the greatest extent possible. An FIU should be able to refuse to exchange information with another FIU only in exceptional circumstances where the exchange could be contrary to fundamental principles of national law. Those exceptional circumstances should be specified in a way which prevents misuse of, and undue limitations on, the free exchange of information for analytical purposes. (AM 34, 305)*
- (47) The powers of FIUs include the right to access directly or indirectly the 'financial', 'administrative' and 'law enforcement' information that they require in order to combat money laundering, its associated predicate offences and terrorist financing. The lack of definition of what types of information these general categories include has resulted in FIUs having been granted with access to considerably diversified sets of information which has an impact on FIUs' analytical functions as well as on their capacity to cooperate effectively with their counterparts from other Member States. It is therefore necessary to define the minimum sets of 'financial', 'administrative' and 'law enforcement' information that should be made directly **or indirectly** ~~or indirectly~~ available to every FIU across the Union. Moreover, FIUs should be able to obtain swiftly from any obliged entity all necessary information relating to their functions. An FIU should also be able to obtain such information upon request made by another FIU and to exchange that information with the requesting FIU *in compliance with existing legal provisions, such as Directive (EU) 2019/1153 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA. (AM 302) Access to financial, administrative and law enforcement information by FIUs should be in accordance with the principle of data minimisation. (AM 35)*
- (48) The vast majority of FIUs have been granted the power to take urgent action and suspend or ~~withhold consent to prohibit~~ a transaction *for a determined period of time* in order to analyse it, confirm the suspicion and disseminate the results of the analytical activities to the competent authorities. However, there are certain variations in relation to the duration of the postponement powers across the different Member States, with an impact not only on the postponement of activities that have a cross-border nature through FIU-to-FIU cooperation, but also on individuals' fundamental rights. Furthermore, in order

to ensure that FIUs have the capacity to promptly restrain criminal funds or assets and prevent their dissipation, also for seizure purposes, FIUs should be granted the power to suspend, **for the necessary and adequate period of time**, the use of a bank or payment account in order to analyse the transactions performed through the account, confirm the suspicion and disseminate the results of the analysis to the competent authorities. Given that postponement powers have an impact on the right to property, the preservation of affected persons' fundamental rights should be guaranteed. **Where an FIU decides to suspend or prohibit a transaction or an account that concerns another Member State, it should promptly forward this information to the FIU of that Member State and make it available to other FIUs through FIU.net. (AM 36 308) Each FIU should appoint a Fundamental Right's Officer from within their own staff to ensure that fundamental rights are guaranteed at all times. (AM 307)**

- (49) For the purposes of greater transparency and accountability and to increase awareness with regard to their activities, FIUs should issue activity reports on an annual basis. These reports should at least provide statistical data in relation to the suspicious transaction reports received, the number of disseminations made to national competent authorities, the number of requests submitted to and received by other FIUs ~~as well as~~ information on trends and typologies identified **as well as requests submitted to and received from competent authorities, Europol and EPPO**. This report should be made public except for the elements which contain sensitive and classified information. At **regular intervals, and at** least once annually, the FIU should provide **specific** obliged entities with feedback on the quality of suspicious transaction reports, their timeliness, the description of suspicion and any additional documents provided. Such feedback ~~can~~ **should** be provided to individual obliged entities or groups of obliged entities, **depending on the sector**, and should aim to further improve the obliged entities' ability to detect and identify suspicious transactions and activities and enhance the overall reporting mechanisms. (AM 37, 310)
- (50) The purpose of the FIU is to collect and analyse the information which they receive with the aim of establishing links between suspicious transactions and underlying criminal activity in order to prevent and combat money laundering and terrorist financing, and to disseminate the results of its analysis as well as additional information to the competent authorities where there are grounds to suspect money laundering, associated predicate offences or financing of terrorism. An FIU should not refrain from or refuse the exchange of information to another FIU, spontaneously or upon request, for reasons such as a lack of identification of an associated predicate offence, features of criminal national laws and differences between the definitions of associated predicate offences or the absence of a reference to particular associated predicate offences. Similarly, an FIU should grant its prior consent to another FIU to forward the information to other competent authorities regardless of the type of possible associated predicate offence **and whether or not the predicate offence has been identified**, in order to allow the dissemination function to be carried out effectively. FIUs have reported difficulties in exchanging information based on differences in national definitions of certain predicate offences, such as tax crimes, which are not harmonised by Union law. Such differences should not hamper the mutual exchange, the dissemination to other competent authorities and the use of that information. FIUs should rapidly, constructively and effectively ensure the widest range of international cooperation with third countries' FIUs in relation to money laundering, associated predicate offences and terrorist financing in accordance with the applicable data protection rules for data transfers, FATF Recommendations and Egmont Principles for Information Exchange between Financial Intelligence

Units, while fully respecting data protection and fundamental rights **obligations such as protecting rule of law.** (AM 38, 806)

- (50a) *For FIUs to carry out their tasks effectively, given the cross-border nature of many transactions, they must cooperate with each other and with competent authorities, including law enforcement, but also tax and customs authorities, Europol and the European Anti-Fraud Office, in a more meaningful and efficient manner. Cooperation with FIUs of third countries is also essential in order to fight money laundering and terrorist financing at a global level and to comply with international AML/FT standards. Member States shall enable, through their legislation, such cooperation and empower their FIUs to enter into effective cooperation arrangements. (AM 312)*
- (50b) *In order to ensure appropriate follow up, it is essential that FIUs disseminate the results of their analysis to competent authorities, including information received from other FIUs. Where prior consent to further dissemination is necessary, Member States should ensure that the requested FIU's prior consent is granted promptly and to the largest extent possible, regardless of the type of predicate offences **and whether or not the predicate offence has been identified.** Any refusal should be based solely on objective grounds and be grounded on a reasoned justification that such dissemination would fall beyond the scope of application of AML/CFT provisions, could lead to an impairment on ongoing investigations, or would affect fundamental principles of national or Union law. (AM 39)*
- (50c) *When granting consent for the further dissemination of information to competent authorities, the requested FIU should be able to impose restrictions and conditions for the use of that information. The receiving FIU and the competent authorities concerned should comply with the restrictions and conditions set by the requested FIU. For example, a requested FIU might agree that the receiving FIU disseminate the information to competent authorities on the condition that that information can be used for operational and strategic analysis purposes only. In such an event, competent authorities in the receiving Member States should not automatically use the disseminated information as evidence in a judicial proceeding. Instead, competent authorities should use the applicable judicial cooperation mechanisms to seek information for evidentiary purposes. (AM 40)*
- (51) *FIUs should use secure facilities, including protected channels of communication **by using end-to-end encryption**, to cooperate and exchange information amongst each other **via the FIU.net and, when available, its one-stop-shop.** In this respect, a **fully encrypted, safe and secure** system for the exchange of information between FIUs of the Member States ('FIU.net') should be set up. The system should be managed and hosted by AMLA. The FIU.net should be **the only system** used by FIUs to cooperate and exchange information amongst each other and may also be used, where appropriate, to exchange information with FIUs of third countries and with other authorities and Union bodies. The functionalities of the FIU.net should be used by FIUs to their full potential. Those functionalities should allow FIUs to match their data with data of other FIUs in an anonymous way **and subject matter data with the Europol database, in accordance with Regulation (EU) 2016/794**, with the aim of detecting subjects of the FIU's interests in other Member States and identifying their proceeds and funds, whilst ensuring full protection of personal data. (AM 41, 313, 314)*
- (51a) *Obligated entities should report suspicions of money laundering, predicate offences and terrorist financing, including on attempted transactions, directly to the FIU of the Member State in whose territory the obliged entity is established. For this purpose,*

*obliged entities should follow the instructions from their FIU for reporting those suspicion by using protected communication channels. In order to further standardise the reporting of STRs, to reach efficiency gains in FIU operations, and to facilitate the reporting by obliged entities, it is essential to develop a common interface for such reporting based on the FIU.Net system (“FIU.Net one-stop-shop”). AMLA should develop such FIU.Net one-stop-shop reporting interface in order to enable an obliged entity to report directly information to the FIU of the Member State in whose territory the obliged entity transmitting the information is established. Such interface should also allow for the immediate transmission of this information to any other FIU which is concerned by a suspicious transaction report, based on the criteria to be determined through a Regulatory Technical Standards. The use of the FIU.Net one-stop-shop should be introduced gradually over time in order to allow a smooth and uninterrupted reporting of suspicion transaction reports and to leave sufficient time for FIUs and obliged entities to implement the necessary technical changes. FIUs may therefore decide to instruct obliged entities to report information via the FIU.Net one-stop-shop as of [5 years after entry into force of this Directive]. The use of FIU.Net one-stop-shop should be mandatory for obliged entities as of [6 years after entry into force of this Directive]. (AM 313, 315)*

- (52) It is important that FIUs cooperate and exchange information effectively with one another. In this regard, AMLA should provide the necessary assistance, not only by means of coordinating joint analyses of cross-border suspicious transaction reports, but also by developing draft regulatory technical standards concerning the format to be used for the exchange of information between FIUs and the relevant factors to be taken into account when determining if a suspicious transaction report concerns another Member State as well as **guidelines** on the nature, features and objectives of operational and of strategic analysis.
- (53) Time limits for exchanges of information between FIUs are necessary in order to ensure quick, effective and consistent cooperation. Time limits should be set out in order to ensure effective sharing of information within reasonable time or to meet procedural constraints. Shorter time limits should be provided in exceptional, justified and urgent cases where the requested FIU is able to access directly the databases where the requested information is held. In the cases where the requested FIU is not able to provide the information within the set time limits, it should inform its counterpart accordingly.
- (54) The movement of illicit money traverses borders and may affect different Member States. The cross-border cases, involving multiple jurisdictions, are becoming more and more frequent and increasingly significant, also due to the activities carried out by obliged entities on a cross-border basis. In order to deal effectively with cases that concern several Member States, FIUs should be able to go beyond the simple exchange of information for the detection and analysis of suspicious transactions and activities and share the analytical activity itself. FIUs have reported certain important issues which limit or condition the capacity of FIUs **and AMLA** to engage in joint analysis. Carrying out joint analysis of suspicious transactions and activities will enable FIUs to exploit potential synergies, to use information from different **national and EU** sources, to obtain a full picture of the anomalous activities and to enrich the analysis. FIUs should be able to conduct joint analyses of suspicious transactions and activities and to set up and participate in joint analysis teams for specific purposes and limited period with the assistance of AMLA. The participation of third parties may be instrumental for the successful outcome of joint analyses. Therefore, FIUs may invite, **when necessary and adequate**, third parties to take part in the joint analysis where such participation would fall

within the respective mandates of those third parties. *Similarly, AMLA should be able to take the initiative to set up a joint analysis in certain clearly specified situations.* (AMs 42, 316, 317)



## **COMP E – supervision, provision of information and sanctions (Articles 29-38, Recitals 55-69)**

### **Articles 29-38**

**AMs Covered:** 170 (Rapporteurs), 814 (Peter-Hansen and other), Pereira (815), 171 (Rapporteurs), 816 (Garicano and others), 819 (Peter-Hansen and other) 172 (Rapporteurs), 173 (Rapporteurs), 174 (Rapporteurs), 820 (Garicano and other), 821 (Schirdewan), 175 (Rapporteurs), 823 (Garcia-Margallo y Marafil and others), 824 (Garicano and others), 826 (Strugariu and others), 827 (Schirdewan), 828 (Peter-Hansen and other), 829 (Seekatz), 176 (Rapporteurs), 177 (Rapporteurs), 831 (Seekatz and other), 832 (Garicano & others), 833 (Peter-Hansen and other), 834 (Regner), 836 (Peter-Hansen and other), 178 (Rapporteurs), 179 (Rapporteurs), 841 (Peter-Hansen and other), 180 (Rapporteurs), 844 (Garicano and others), 845 (Peter-Hansen and other), 846 (Regner), 847 (Garicano and others), 848 (Peter-Hansen and other), 849 (Regner), 181 (Rapporteurs), 182 (Rapporteurs), 183 (Rapporteurs), 184 (Rapporteurs), 852 (Peter-Hansen and other), 185 (Rapporteurs), 853 (Garicano and others), 854 (Daly), 855 (Regner), 856 (Garicano and others), 186 (Rapporteurs), 859 (Garicano and others), 861 (Garicano and others), 862 (Peter-Hansen and others), 863 (Daly), 187 (Rapporteurs), 867 (Regner), 188 (Rapporteurs), 873 (Beer), 189 (Rapporteurs), 874 (Peter-Hansen and other), 190 (Rapporteurs), 875 (Beer), 191 (Rapporteurs), 192 (Rapporteurs), 193 (Rapporteurs), 879 (Peter-Hansen and other), 880 (Schirdewan), 881 (Strugariu and others), 882 (Castaldo and others),

**AMs falling:** 817 (Garicano and others), 818 (Daly), 822 (Daly), 825 (Daly), 835 (Peter-Hansen), 837 (Garicano & others), 838 (Garraud and other), 839 (Regner), 840 (Garicano and others), 842 (Regner), 843 (Regner), 850 (Garicano and others), 851 (Regner), 857 (Peter-Hansen and other), 858 (Daly), 860 (Beck), 864 (Peter-Hansen and other), 865 (Regner), 866 (Garicano and others), 868 (Garicano and others), 869 (Garicano and others), 870 (Garicano and others), 871 (Peter-Hansen and other), 872 (Ferber), 876 (Beer), 877 (Beer), 878 (Beer), 883 (Beer), **884 (Karas and other)** 885 (Beer).

### **Recitals (55)-(69)**

**AMs covered:** 43 (rapporteurs), 318 (Pereira), 44 (rapporteurs), 319 (Zile & other), 45 (rapporteurs), 46 (rapporteurs), 47 (rapporteurs), 48 (rapporteurs), 49 (rapporteurs), 50 (rapporteurs),

**AMs falling:** 320 (Garraud & others), 321 (Seekatz & other), 322 (Garraud & others), 323 (Ferber)

## **CHAPTER IV**

### **ANTI-MONEY LAUNDERING SUPERVISION**

#### **Section 1**

#### **General provisions**

#### **Article 29**

### *Powers and resources of national supervisors*

1. Member States shall ensure that all obliged entities are subject to adequate, **effective, and independent** supervision. To that end, Member States shall appoint supervisors to monitor effectively, and to take the measures necessary to ensure, compliance by the obliged entities with the requirements set out in Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], **Regulation [please insert reference to the Funds Transfer Regulation [recast]]** and with the requirement to implement targeted financial sanctions. ***Where Member States have more than one supervisor, they shall appoint one leading supervisor in order to ensure proper coordination*** (AM 170, 814, 815).
  - 1a. ***Supervisors shall participate in, and contribute to, the activities of the European AML/CFT Supervisory system, in accordance with [please insert reference to the AMLA Regulation]. They shall in particular:***
    - (a) ***be able to participate in joint supervisory teams as an integral part of their tasks, as well as in other activities undertaken by AMLA pursuant to its mandate;***
    - (b) ***provide AMLA with the data and information required to fulfil its tasks, as well as to implement measures taken by AMLA in accordance with [please insert reference to the AMLA Regulation] and applicable Union law.******All information obtained by supervisors through the participation in AMLA's activities shall be covered by the strictest confidentiality.*** (AM 816)
2. Member States shall ensure that supervisors have adequate financial, human and technical resources to perform their tasks as listed in paragraph 4. Member States shall ensure that staff of those authorities are of high integrity and appropriately skilled, and maintain high professional standards, including standards of confidentiality, data protection and standards addressing conflicts of interest.
3. In the case of the obliged entities referred to in Article 3, points (3)(a), ~~(b) and (d)~~ **and (b)**, of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], Member States may allow the function referred to in paragraph 1 of this Article to be performed by self-regulatory bodies, provided that those self-regulatory bodies have the powers referred to in paragraph 5 of this Article and have adequate financial, human and technical resources to perform their functions. Member States shall ensure that staff of those bodies are of high integrity and appropriately skilled, and that they maintain high professional standards, including standards of confidentiality, data protection and standards addressing conflicts of interest (AM 171, 819).
  - 3a. ***By [2 years after the date of transposition of this Directive], AMLA shall, after consulting the EBA, issue guidelines addressed to supervisors on the fulfilment of the requirements laid down in paragraphs 2 and 3.*** (AM 172, 817)
4. For the purposes of paragraph 1, Member States shall ensure that the national supervisors perform the following tasks:
  - (a) to disseminate relevant information to obliged entities pursuant to Article 30;
  - (b) to decide of those cases where the specific risks inherent in a sector are clear and understood and individual documented risk assessments pursuant to Article 8 of

Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* are not required;

- (c) to verify the adequacy and implementation of the internal policies, controls and procedures of obliged entities pursuant to Chapter II of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* and of the human resources allocated to the performance of the tasks required under that Regulation;
  - (d) to regularly assess and monitor the money laundering and terrorist financing risks the obliged entities are exposed to;
  - (e) to monitor compliance by obliged entities with regard to their obligations in relation to targeted financial sanctions;
  - (f) to conduct all the necessary off-site, on-site and thematic investigations and any other inquiries, assessments and analyses necessary to verify that obliged entities comply with the requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*, with the requirement to implement targeted financial sanctions, and with any administrative measures taken pursuant to Article 41;
  - (g) to ***respond without undue delay to any suspicion of non-compliance with applicable requirements on the part of supervised obliged entities and*** take appropriate supervisory measures to address any breaches of applicable requirements by the obliged entities identified in the process of supervisory assessments and follow up on the implementation of such measures (AM 173).
  - (ga) ***to take appropriate supervisory measures to address allegations of breaches of applicable requirements following public revelations, or information brought to their knowledge through private channels, in particular through the mechanisms provided for in Article 43.*** (AM 174)
5. Member States shall ensure that supervisors have adequate powers to perform their tasks as provided in paragraph 4, including the power to:
- (a) compel the production of any information from obliged entities which is relevant for monitoring and verifying compliance with the requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* and to perform checks, including from agents or external service providers to whom the obliged entity has outsourced part of its tasks to meet the requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*;
  - (b) impose appropriate and proportionate administrative measures to remedy the situation in the case of breaches, including through the imposition of administrative sanctions in accordance with Section 4 of this Chapter.
6. Member States shall ensure that financial supervisors and supervisors in charge of gambling operators have powers additional to those referred to in paragraph 5, including the power to investigate the business premises of the obliged entity without prior announcement where the proper conduct and efficiency of inspection so require, and that they have all the necessary means to carry out such investigation.

For the purposes of the first subparagraph, the supervisors shall at least be able to:

- (a) examine the books and records of the obliged entity and take copies or extracts from such books and records;
- (b) obtain access to any software, databases, IT tools or other electronic means of recording information used by the obliged entity;
- (c) obtain written or oral explanations from any person responsible for AML/CFT internal policies and controls or their representatives or staff, as well as any representative or staff of entities to which the obliged entity has outsourced tasks pursuant to Article 40 of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*, and interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation.

### *Article 30*

#### *Provision of information to obliged entities*

1. Member States shall ensure that supervisors make information on money laundering and terrorist financing available to the obliged entities under their supervision.
2. The information referred to in paragraph 1 shall include the following:
  - (a) the supra-national risk assessment drawn up by the Commission pursuant to Article 7 and any relevant recommendation by the Commission on the basis of that Article;
  - (b) national or sectoral risk assessments drawn up pursuant to Article 8;
  - (c) relevant guidelines, recommendations and opinions issued by AMLA in accordance with Articles 43 and 44 of Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]*;
  - (d) information on third countries identified pursuant to Section 2 of Chapter III of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*;
  - (e) any guidance and report produced by AMLA, **the European Data Protection Board** and other supervisors and, where relevant, the public authority overseeing self-regulatory bodies, the FIU or any other competent authority or international organisations and standard setters regarding money laundering and terrorist financing methods which might apply to a sector and indications which may facilitate the identification of transactions or activities at risk of being linked to money laundering and terrorist financing in that sector, as well as on obliged entities' obligations in relation to targeted financial sanctions. (AM 175)
3. Member States shall ensure that supervisors make information on persons or entities designated in relation to targeted financial sanctions available to the obliged entities under their supervision immediately. (AM 824)

### *Article 31*

#### *Risk-based supervision*

1. Member States shall ensure that supervisors apply a risk-based approach to supervision. To that end, Member States shall ensure that they:

- (a) have a clear understanding of the risks of money laundering and terrorist financing present in their Member State;
  - (b) assess all relevant information on the specific domestic and international risks associated with customers, products and services of the obliged entities;
  - (c) base the frequency and intensity of on-site, off-site and thematic supervision on the risk profile of obliged entities, and on the risks of money laundering and terrorist financing in that Member State. To that end, supervisors shall draw up annual supervisory programmes.
2. By *[2 years after the date of entry into force of this Directive]*, AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall set out the benchmarks and a methodology for assessing and classifying the inherent and residual risk profile of obliged entities, as well as the frequency at which such risk profile shall be reviewed. Such frequency shall take into account any major events or developments in the management and operations of the obliged entity, as well as the nature and size of the business.
  3. The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in paragraph 2 of this Article in accordance with Articles 38 to 41 of Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]*.
  4. By *[1 year after the date of transposition of this Directive]*, AMLA shall issue guidelines addressed to supervisors on the characteristics of a risk-based approach to supervision and the steps to be taken when conducting supervision on a risk-sensitive basis.
  5. Member States shall ensure that supervisors take into account the degree of discretion allowed to the obliged entity, and appropriately review the risk assessments underlying this discretion, and the adequacy of its policies, internal controls and procedures.
  6. Member States shall ensure that the results of the risk assessments performed by supervisors pursuant to this Article are made available in aggregated form to the FIU.
  - 6a. ***Member States shall ensure that supervisors and self-regulatory bodies (AM 826, 827, 828), prepare a detailed annual activity report and that a summary of that report is made publicly available. That summary shall not contain confidential information. That summary shall include:***
    - (a) *details of the supervisors' tasks;*
    - (b) *an overview of the supervisory activities;*
    - (c) *the number of on-site and off-site supervisory actions; and*
    - (d) *the number of breaches identified on the basis of supervisory actions and sanctions or administrative measures applied by supervisory authorities and self-regulatory bodies pursuant to Section 4 of Chapter IV.*

***The supervisor and self-regulatory body that prepares an annual activity report referred to in the first subparagraph shall transmit that report to the designated authority or mechanism referred to in Article 8(2) and to AMLA (AM 826, 827, 828, 829). The designated authority shall provide feedback and propose possible improvements which may include recommendations to change the allocation of***



*supervisory responsibilities and the arrangements for carrying out supervisory tasks  
(AM 176).*

*Article 31a*

List of credit and financial institutions under enhanced supervision and customer due diligence

1. Financial supervisors shall include specific credit or financial institutions on a list of credit and financial institutions under enhanced supervision where following supervisory activities referred to in Article 29, points (c ), (e), (f) and (g), financial supervisors identify serious and structural weaknesses or vulnerabilities in the application of AML/CFT rules by those credit and financial institutions under their supervision.
2. In the application of measures referred to in paragraph 1, financial supervisors shall take into account the rules and principles of risk-based supervision laid down in Article 31, in particular the benchmarks and a methodology for assessing and classifying the inherent and residual risk profile of obliged entities and the guidelines on the characteristics of a risk-based approach to supervision.
3. Financial supervisors shall inform the credit and financial institutions of their inclusion on the list referred to in paragraph 1 prior to the inclusion through a reasoned communication. Financial supervisors shall also communicate to the concerned credit and financial institution the measures which they shall put in place in order to address the weaknesses identified within a specific timeframe.
4. Financial supervisors shall promptly inform AMLA and national non-AML/CFT supervisors of the measures taken under paragraph 1. Financial supervisors shall also in a timely manner inform obliged entities, as referred to in Article 3 points 1 and 2 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation – COM/2021/420 final], of the measures taken under paragraph 1.
5. Where obliged entities, as referred to in Article 3 points 1 and 2 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation – COM/2021/420 final], become aware of transactions involving credit and financial institutions under enhanced supervision, they shall consider applying measures laid down in article 28(4) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation – COM/2021/420 final], proportionate to the risks identified with regards to transactions involving credit or financial institutions under enhanced supervision.
6. Where the specific credit and financial institution referred to in paragraph 1 is part of a group, financial supervisors shall inform their counterparts in other Member States in accordance with Article 33.]

*Article 32*

### *Disclosure to FIUs*

1. Member States shall ensure that if, in the course of the checks carried out on the obliged entities, or in any other way, supervisors discover facts that could be related to money laundering or to terrorist financing, they shall promptly inform the FIU ***if the obliged entity itself would have been obligated to report the suspicious transaction in accordance with Articles 50 and 51 of Regulation [please insert reference to AML Regulation]*** (AM 831).
2. Member States shall ensure that supervisors empowered to oversee the stock, foreign exchange and financial derivatives markets, inform the FIU if they discover facts that could be related to money laundering or terrorist financing.

### *Article 33*

#### *Supervision of obliged entities operating under the freedom of establishment and freedom to provide services*

1. Member States shall ensure that supervisors cooperate with each other to the greatest extent possible, regardless of their respective nature or status. Such cooperation may include conducting, within the powers of the requested supervisor, inquiries on behalf of a requesting supervisor, and the subsequent exchange of the information obtained through such inquiries.
2. In addition to ***the obligations laid down in*** Article 5 (AM 177), obliged entities wishing to exercise the freedom to provide services by carrying out activities within the territory of another Member State for the first time shall notify the supervisors of the home Member State of the activities which they intend to carry out. ***Those supervisors shall, within three months of the receipt of that information, communicate it to the supervisors of the host Member State*** (AM 832) Such notification shall also be required where provision of cross-border services is carried out by agents of the obliged entity ***or through any natural or legal person which acts on their behalf. It shall not apply to obliged entities that, pursuant to other Union acts, are subject to specific notification procedures for the exercise of the freedom of establishment and to provide services.*** (AM 832, 833, 834)
3. The supervisors of the home Member State shall, within one month of receipt of the notification provided for in paragraph 2, transmit that notification to the supervisors of the host Member State.
4. In the cases covered by paragraph 2 of this Article and Article 5, supervisors of the host Member State shall cooperate with supervisors of the home Member State and lend assistance to ensure the verification of compliance by the obliged entity with the requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* and of Regulation *[please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final]* and to take appropriate, proportionate, ***effective and dissuasive*** measures to address breaches (AM 836).

In the cases covered by Article 5, the supervisors of the host Member State shall be allowed at their own initiative to take appropriate, proportionate, ***effective and dissuasive*** (AM 836) measures to address serious failings that require immediate remedies ***and shall promptly inform the supervisor of the home Member State.*** (AM 178) Those measures shall be temporary and be terminated when the failings identified

are addressed, including with the assistance of or in cooperation with the supervisors of the home Member State of the obliged entity.

**4a. By ... [2 years after the date of transposition of this Directive], AMLA shall, issue guidelines on the criteria for identifying serious failings that require immediate action, as well as the measures that may be required from host supervisors to address such failings.**

5. Where the supervisors of the home and host Member State disagree on the measures to be taken in relation to an obliged entity, **they each of them may shall** refer the matter to AMLA and request its assistance in accordance with Articles 5 and 10 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]. AMLA shall provide its advice on the matter of disagreement within one month **and settle the disagreement on the matter by means of a binding instruction pursuant to Article XX(X) [Reference to AMLA Regulation]** (AM 179, 841)

#### Article 34

##### *Provisions related to cooperation in the context of group supervision*

1. In the case of credit and financial institutions that are part of a group, Member States shall ensure that, for the purposes laid down in Article 29(1), financial supervisors of the home Member State and those of the host Member State cooperate with each other to the greatest extent possible, regardless of their respective nature or status. They shall also cooperate with AMLA when it exercises supervisory functions in accordance with Article 5(2) of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].
2. Except where AMLA exercises supervisory functions in accordance with Article 5(2) of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final], Member States shall ensure that the financial supervisors of the home Member State supervise the effective implementation of the group-wide policies, controls and procedures referred to in Article 13 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]. Member States shall also ensure that financial supervisors of the host Member State supervise the compliance of the establishments located in the territory of its Member State with the requirements of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final].
3. For the purposes of this Article, and except in cases where AML/CFT supervisory colleges are established in accordance with Article 36, Member States shall ensure that financial supervisors provide one another with any information they require for the exercise of their supervisory tasks, whether on request or on their own initiative. In particular, financial supervisors shall exchange any information that could significantly influence the assessment of the inherent or residual risk exposure of a credit or financial institution in another Member State, including:
  - (a) identification of the group's legal, governance and organisational structure, covering all subsidiaries and branches;
  - (b) internal controls, policies and procedures in place within the group;

- (c) adverse developments in relation to the parent undertaking, subsidiaries or branches, which could seriously affect other parts of the group;
- (d) administrative measures and sanctions taken by financial supervisors in accordance with Section 4 of this Chapter.

Member States shall also ensure that financial supervisors are able to conduct, within their powers, inquiries on behalf of a requesting supervisor, and to share the information obtained through such inquiries.

4. By *[2 years after the date of entry into force of this Directive]*, AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall detail the respective duties of the home and host supervisors, and the modalities of cooperation between them.

The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in the first sub-paragraph in accordance with Articles 38 to 41 of Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]*.

5. Financial supervisors may refer to AMLA any of the following situations:
  - (a) where a financial supervisor has not communicated the information referred to in paragraph 3;
  - (b) where a request for cooperation has been rejected or has not been acted upon within a reasonable time.

AMLA may act in accordance with the powers conferred on it under Articles 5 and 10 of Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]*. When doing so, AMLA shall provide its opinion on the subject-matter of the request within one month **and settle the disagreement on the matter by means of a binding instruction pursuant to Article XX(X) [Reference to AMLA Regulation].** (AM 180)

- ~~6. Member States shall ensure that the provisions of this Article also apply to the supervision of groups of obliged entities other than credit or financial institutions. Member States shall also ensure that in cases where obliged entities other than credit and financial institutions are part of structures which share common ownership, management or compliance control, including networks or partnerships, cooperation and exchange of information between supervisors is facilitated.~~

### *Article 34a*

#### *Supervision of groups of obliged entities other than credit or financial institutions*

***1. Member States shall ensure that the provisions of Article 34 also apply to non-financial supervisors in cases of (AM 844) supervision of groups of obliged entities other than credit or financial institutions, except where AMLA exercises direct supervision in accordance with article 5(2) of Regulation [please insert reference to AMLA Regulation]. Member States shall also ensure that in cases where obliged entities other than credit and financial institutions are part of structures which share common ownership, management or compliance control, including networks or partnerships, cooperation and exchange of information between financial and non-financial (AM 845) supervisors is facilitated.***

2. By ... [2 years after the date of entry into force of this Directive], AMLA shall, after consultation of supervisors and authorities overseeing self-regulatory bodies, develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall:

a) establish criteria to identify groups of obliged entities other than credit or financial institutions which are part of structures which operate cross borders and share common ownership, management or compliance control, including networks or partnerships;

b) detail the respective duties of the home and host supervisors, and the modalities of cooperation between them, in particular the exchange of relevant information to assess inherent or residual risk exposure of an obliged entity other than credit or financial institutions in another Member State

c) provide guidance on the instances where cooperation and exchange of information between financial supervisors and non-financial supervisors is relevant and on the modalities of such cooperation.

3. The Commission shall adopt the regulatory technical standards referred to in the paragraph 2 in accordance with Articles 38 to 41 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421final]. (AM 846)

## Article 35

### *Exchange of information in relation to implementation of group policies in third countries*

Supervisors, including AMLA **and non-AML/CFT authorities** (AM 847, 848, 849) shall inform each other of instances in which the law of a third country does not permit the implementation of the policies, controls and procedures required under Article 13 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]. In such cases, coordinated actions may be taken by supervisors to pursue a solution, **if they deem it necessary**. (AM 181) In assessing which third countries do not permit the implementation of the policies, controls and procedures required under Article 13 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], supervisors shall take into account any legal constraints that may hinder proper implementation of those policies and procedures, including professional secrecy, an insufficient level of data protection and other constraints limiting the exchange of information that may be relevant for that purpose.

## Section 2

Specific provisions applicable to the financial **and non-financial** sector

## Article 36

### *AML/CFT supervisory colleges **in the financial sector***

1. Member States shall ensure that dedicated AML/CFT supervisory colleges are established in any of the following situations:



- (a) where a credit or financial institution has set up establishments in at least two different Member States other than the Member State where its head office is situated;
  - (b) where a third-country credit or financial institution has set up establishments in at least three Member States.
- 1a. ***The supervisory activities of AML/CFT supervisory colleges shall be proportionate to the level of risk posed by the credit or financial institution and the scale of its cross-border activity. AML/CFT supervisory colleges may adjust the programme of supervisory activities within the college on a risk-sensitive basis.*** (AM 182)
- 2. For the purposes of paragraph 1, Member States shall ensure that financial supervisors identify:
  - (a) all credit and financial institutions operating on a cross-border basis that have been authorised in their Member State;
  - (b) all establishments set up by those institutions in other jurisdictions;
  - (c) establishments set up in their territory by credit and financial institutions from other Member States or third countries.
- 3. Member States may allow the establishment of AML/CFT supervisory colleges when a credit or financial institution established in the Union has set up establishments in at least two third countries. Financial supervisors may invite their counterparts in those third countries to set up such college. The financial supervisors participating in the college shall establish a written agreement detailing the conditions and procedures of the cooperation and exchange of information.
- 4. Such colleges may be used for exchanging information, providing mutual assistance or coordinating the supervisory approach to the institution, including, where relevant, the taking of appropriate and proportionate measures to address serious breaches of the requirements of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] that are detected across the establishments set up by the institution in the jurisdiction of a supervisor participating in the college.
- 5. AMLA shall attend the meetings of the AML/CFT supervisory colleges and shall facilitate their work in accordance with Article 29 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]. ***AMLA shall have the power to intervene where disagreements arise between supervisors participating in the AML/CFT supervisory colleges and to settle the disagreement on the matter by means of a binding instruction pursuant to Article XX(X) [Reference to AMLA Regulation]*** (AM 183)
- 5a. ***Financial supervisors in third countries may be allowed to participate in AML/CFT supervisory colleges, in particular in case of AML/CFT supervisory colleges are established under paragraph 1, point (b), provided that:***
  - (a) ***there is a request for participation;***
  - (b) ***Union data protection rules concerning data transfers apply;***
  - (c) ***participation is on the basis of reciprocity;***
  - (d) ***the information disclosed is subject to a guarantee of professional secrecy requirements at least equivalent to that referred to in Article 50(1) and is used***

*solely for the purpose of performing the supervisory tasks of the participating financial supervisors.*

*AMLA shall assess whether financial supervisors in third countries fulfil the conditions laid down in the first subparagraph and decide on the participation of financial supervisors in third countries to supervisory colleges. (AM 184)*

6. By [2 year after the date of entry into force of this Directive], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify the general conditions for the functioning of the AML/CFT supervisory colleges *on a risk sensitive basis* including the terms of cooperation between participants, and the operational functioning of such colleges. *They shall further specify requirements for the participation of financial supervisors in third countries. Prior to the submission of those draft regulatory technical standards to the Commission, AMLA shall consult with the European Data Protection Board on the data protection rules which apply to data transferred to financial supervisors in third countries. (AM 185,AM 852)*

The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 38 to 41 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].

### Article 36a

#### AML/CFT supervisory colleges in the non-financial sector

1. Member States shall ensure that the non-financial supervisors participate in dedicated AML/CFT supervisory colleges that are established pursuant to article 31a [please insert reference to AMLA Regulation] in any of the following situations:
  - (a) where an obliged entity as referred to in Article 3, point (3) of [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] has set up establishments or provides services in at least three different Member States other than the Member State where it is established and has an annual EU-wide turnover of at least 200 million euros;
  - (b) where such an obliged entity as referred to in Article 3, point (3) is a third-country entity that operates in at least four Member States and has an annual EU-wide turnover of at least 200 million euros;
- 1a. The supervisory activities of AML/CFT supervisory colleges shall be proportionate to the level of risk posed by the obliged entity and the scale of its cross-border activity. AML/CFT supervisory colleges may adjust the programme of supervisory activities within the college on a risk-sensitive basis.
2. For the purposes of paragraph 1, following a decision in accordance with Article 31a AMLA [please insert reference to AMLA Regulation], Member States shall ensure that non-financial supervisors identify:
  - (a) all obliged entity as referred to in Article 3, point (3) of [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]

operating on a cross-border basis that have been authorised in their Member State;

(b) all establishments set up by obliged entities as referred to in Article 3, point (3) of [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] in other jurisdictions;

(c) establishments set up in their territory by obliged entities as referred to in Article 3, point (3) of [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] from other Member States or third countries.

3. Such colleges may be used for exchanging information, providing mutual assistance and, where appropriate, coordinating the supervisory approach to the obliged entity, including the taking of appropriate and proportionate measures to address serious breaches of the requirements of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] that are detected in the jurisdiction of a supervisor participating in the college.

4. AMLA shall decide on the need to establish the AML/CFT colleges and attend the meetings of the AML/CFT supervisory colleges and shall facilitate their work in accordance with Article 31a of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]. AMLA shall have the power to intervene where disagreements arise between supervisors participating in the AML/CFT supervisory colleges and mediate and assist in resolving conflicts between participating supervisory authorities on their request pursuant to Article 31a(2) [Reference to AMLA Regulation]

5. Non-financial supervisors in third countries may be allowed to participate in AML/CFT supervisory colleges, in particular in case of AML/CFT supervisory colleges are established under paragraph 1, point (b), provided that:

(a) there is a request for participation;

(b) Union data protection rules concerning data transfers apply;

(c) participation is on the basis of reciprocity;

(d) the information disclosed is subject to a guarantee of professional secrecy requirements at least equivalent to that referred to in Article 50(1) and is used solely for the purpose of performing the supervisory tasks of the participating non-financial supervisors.

AMLA shall assess whether non-financial supervisors in third countries fulfil the conditions laid down in the first subparagraph and decide on the participation of non-financial supervisors in third countries to supervisory colleges.

6. By [3 year after the date of entry into force of this Directive], AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify the general conditions for the functioning of the AML/CFT supervisory colleges on a risk sensitive basis including the terms of cooperation between participants, and the operational functioning of such colleges. They shall further specify requirements for the participation of non-financial supervisors in third countries. Prior to the submission of those draft regulatory technical standards to the Commission, AMLA

shall consult with the European Data Protection Board on the data protection rules which apply to data transferred to non-financial supervisors in third countries.

The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 38 to 41 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].

## Article 37

### Cooperation with ~~financial~~ supervisors in third countries (AM 853)

1. Member States ~~may~~ **shall** (AM 186) authorise ~~financial~~ (AM 855, 856) supervisors to conclude cooperation agreements providing for collaboration and exchanges of confidential information with their counterparts in third countries. Such cooperation agreements shall comply with applicable data protection rules ~~for data transfers~~ and be concluded on the basis of reciprocity and ~~only if the information disclosed is~~ (AM 854) subject to a guarantee of professional secrecy requirements at least equivalent to that referred to in Article 50(1). Confidential information exchanged in accordance with those cooperation agreements shall be used for the purpose of performing the supervisory tasks of those authorities only.

Where the information exchanged originates in another Member State, it shall only be disclosed with the explicit consent of the ~~financial~~ (AM 859) supervisor which shared it and, where appropriate, solely for the purposes for which that supervisor gave its consent.

2. For the purposes of paragraph 1, AMLA ~~may lend such assistance as may be necessary to~~ **shall** assess the equivalence of professional secrecy requirements applicable to the third country counterpart. (AM 187, 861, 862, 863)
3. Member States shall ensure that ~~financial~~ (AM 867) supervisors notify any agreement signed pursuant to this Article to AMLA within one month of its signature. **AMLA shall develop draft implementing technical standards specifying a common template for the cooperation agreements referred to in paragraph 1. The Commission is empowered to adopt the implementing technical standards referred to in this paragraph in accordance with Article 42 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].** (AM 188)

## Section 3

### Specific provisions relating to self-regulatory bodies

## Article 38

### Oversight of self-regulatory bodies

1. Where Member States decide, pursuant to Article 29(3), to allow self-regulatory bodies to perform supervision of the entities referred to in Article 3, points (3)(a), ~~(b)~~ and ~~(d)~~ **and (b)**, (AM 189) of Regulation [please insert reference – proposal for Anti-

*Money Laundering Regulation - COM/2021/420 final*], they shall ensure that the activities of such self-regulatory bodies in the performance of such functions are subject to oversight by a public authority. ~~(AM 873)~~

- 1a. ***The public authority overseeing self-regulatory bodies shall be operationally independent and autonomous and shall carry out its functions free of political, government or industry influence or interference. Staff of those public authorities shall be of high integrity and appropriately skilled, including in detecting biases and in the ethical use of big data sets, and maintain high professional standards, including standards of confidentiality, of data protection and addressing conflicts of interest.*** (AM 190, 874)
2. The authority overseeing self-regulatory bodies shall be responsible for ***ensuring that self regulatory bodies as a minimum fulfil their legal obligations stemming from Union acts or national legislation transposing Union acts, including by:*** (AM 875):
  - (a) verifying that any self-regulatory body performing the functions or aspiring to perform the functions referred to in Article 29(1) satisfies the requirements of paragraph 3 of that Article;
  - (b) issuing guidance as regards the performance of the functions referred to in Article 29(1);
  - (c) ensuring that self-regulatory bodies perform their functions under Section 1 of this Chapter to the highest standards ***and that, in particular, self-regulatory bodies perform the tasks laid down in Article 29(4);*** (AM 191)
  - (d) reviewing the exemptions granted by self-regulatory bodies from the obligation to draw up an individual documented risk assessment pursuant to Article 29(4), point (b).
3. Member States shall ensure that the authority overseeing self-regulatory bodies is granted adequate powers to discharge its responsibilities under paragraph 2. ~~As a minimum~~ ***In particular***, Member States shall ensure that the authority has the power to: (AM 192)
  - (a) compel the production of any information that is relevant to monitoring compliance and performing checks, except for any information collected by obliged entities referred to in Article 3, points (3)(a), ~~(b) and (d)~~ ***and (b)***, of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* in the course of ascertaining the legal position of their client, ***subject to the conditions laid down in the Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]***, (AM 193) or for performing the task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings; whether such information was collected before, during or after such proceedings;
  - (b) issue instructions to a self-regulatory body for the purpose of remedying a failure to perform its functions under Article 29(1) or to comply with the requirements of paragraph 5 ***and*** 6 of that Article (AM 879, 880, 881, 882), or to prevent any such failures. When issuing such instructions, the authority shall consider any relevant guidance it provided or that has been provided by AMLA.
4. Member States shall ensure that the authority overseeing self-regulatory bodies informs the authorities competent for investigating and prosecuting criminal activities



timely, directly or through the FIU, of any breaches which are subject to criminal sanctions that it detects in the performance of its tasks.

5. The authority overseeing self-regulatory bodies shall publish an annual report containing information about:
- (a) the number and nature of breaches detected by each self-regulatory body and the administrative measures or sanctions imposed on obliged entities;
  - (b) the number of suspicious transactions reported by the entities subject to supervision by each self-regulatory body to the FIU, whether submitted directly pursuant to Article 50(1) of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*, or forwarded by each self-regulatory body to the FIU pursuant to Article 51(1) of that Regulation;
  - (c) the number and description of measures taken under Article 40 by each self-regulatory body to monitor compliance by obliged entities with the requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* referred to in Article 40(1);
  - (d) the number and description of measures taken by the authority overseeing self-regulatory bodies under this Article and the number of instructions issued to self-regulatory bodies.

Such report shall be made available on the website of the authority overseeing self-regulatory bodies and submitted to the Commission and AMLA.

#### **Recitals (55)-(69)**

**AMs covered:** 43 (rapporteurs), 318 (Pereira), 44 (rapporteurs), 319 (Zile & other), 45 (rapporteurs), 46 (rapporteurs), 47 (rapporteurs), 48 (rapporteurs), 49 (rapporteurs), 50 (rapporteurs),

**AMs falling:** 320 (Garraud & others), 321 (Seekatz & other), 322 (Garraud & others), 323 (Ferber)

#### **Recitals (55)-(69)**

- (55) Effective supervision of all obliged entities is essential to protect the integrity of the Union financial system and of the internal market. To this end, Member States should deploy effective, ***independent*** and impartial AML/CFT supervision and set forth the conditions for effective, timely and sustained cooperation between supervisors ***and be accordingly granted with such legal powers***. (AMs 43, 318, 319)
- (56) Member States should ensure effective, impartial, ***independent*** and risk-based supervision of all obliged entities, preferably by public authorities via a separate and independent national supervisor. National supervisors should be able to perform a comprehensive range of tasks in order to exercise effective supervision of all obliged entities. (AMs 44)
- (57) The Union has witnessed on occasions a lax approach to the supervision of the obliged entities' duties in terms of anti-money laundering and counter-terrorist financing duties. Therefore, it has become of utmost importance that competent national supervisors, as

part of the integrated supervisory mechanism put in place by this Directive and Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final], obtain clarity as to their respective rights and obligations.

- (58) In order to assess and monitor more effectively and regularly the risks the obliged entities are exposed to and the manner in which they implement targeted financial sanctions, it is necessary to clarify that national supervisors are both entitled and bound to conduct all the necessary off-site, on-site and thematic investigations and any other inquiries and assessments as they see necessary. ***They should also be able to react without undue delay to any suspicion of non-compliance with applicable requirements and to take appropriate supervisory measures to address allegations of breaches.*** This will not only help supervisors decide on those cases where the specific risks inherent in a sector are clear and understood, but also provide them with the tools required to further disseminate relevant information to obliged entities in order to inform their understanding of money laundering and terrorist financing risks. (AM 45)
- (59) Outreach activities, including dissemination of information by the supervisors to the obliged entities under their supervision, ***is including on data protection issues, are*** essential to guarantee that the private sector has an adequate understanding of the nature and level of money laundering and terrorist financing risks they face ***and their obligations in that regard.*** (AM 46)
- (60) Supervisors should adopt a risk-based approach to their work, which should enable them to focus their resources where the risks are the highest, whilst ensuring that no sector or entity is left exposed to criminal attempts to launder money or finance terrorism. AMLA should play a leading role in fostering a common understanding of risks, and should therefore be entrusted with developing the benchmarks and a methodology for assessing and classifying the inherent and residual risk profile of obliged entities, as well as the frequency at which such risk profile should be reviewed. ***In that regard, supervisors and self-regulatory bodies should adopt an annual activity report and make a summary thereof publicly available.*** (AM 47)
- (61) The disclosure to FIUs of facts that could be related to money laundering or to terrorist financing by supervisors is one of the cornerstones of efficient and effective supervision of money laundering and terrorist financing risks. It is therefore necessary for Member States to put in place a system that ensures that FIUs are properly and promptly informed.
- (62) Cooperation between national supervisors is essential to ensure a common supervisory approach across the Union. To be effective, this cooperation has to be leveraged to the greatest extent possible and regardless of the respective nature or status of the supervisors. In addition to traditional cooperation - such as the ability to conduct investigations on behalf of a requesting supervisory authority – it is appropriate to mandate the set-up of AML/CFT supervisory colleges, ***including with a participation of third country financial supervisors under certain conditions and AMLA,*** with respect to obliged entities operating under the freedom to provide services or of establishment and with the respect of obliged entities which are part of a group. ***The supervisory activities of AML/CFT supervisory colleges should be proportionate to the level of risk posed by the credit or financial institution and the scale of significance of cross-border activity.*** (AM 48)
- (63) Where an obliged entity operates establishments in another Member State, including through a network of agents, the supervisor of the home Member State should be responsible for supervising the obliged entity's application of group-wide AML/CFT policies and procedures. This could involve on-site visits in establishments based in another

Member State. The supervisor of the home Member State should cooperate closely with the supervisor of the host Member State and should inform the latter of any issues that could affect their assessment of the establishment's compliance with the host AML/CFT rules.

- (64) Where an obliged entity operates establishments in another Member State, including through a network of agents, the supervisor of the host Member State retains responsibility for enforcing the establishment's compliance with AML/CFT rules, including, where appropriate, by carrying out onsite inspections and offsite monitoring and by taking appropriate and proportionate measures to address serious infringements of those requirements. The supervisor of the host Member State should cooperate closely with the supervisor of the home Member State and should inform the latter of any issues that could affect its assessment of the obliged entity's application of group AML/CFT policies and procedures. In order to remove serious infringements of AML/CFT rules that require immediate remedies, the supervisor of the host Member State should be able to apply appropriate and proportionate temporary remedial measures, applicable under similar circumstances to obliged entities under their competence, to address such serious failings, where appropriate, with the assistance of, or in cooperation with, the supervisor of the home Member State.
- (65) To ensure better coordination of efforts and contribute effectively to the needs of the integrated supervisory mechanism, the respective duties of supervisors in relation to those obliged entities should be clarified, and specific, proportionate cooperation mechanisms should be provided for.
- (66) Cross-border groups need to have in place far-reaching group-wide policies and procedures. To ensure that cross-border operations are matched by adequate supervision, there is a need to set out detailed supervisory rules, enabling supervisors of the home Member State and those of the host Member State cooperate with each other to the greatest extent possible, regardless of their respective nature or status, and with AMLA to assess the risks, monitor developments that could affect the various entities that form part of the group ~~and~~, coordinate supervisory action *and settle disputes by means of a binding instruction*. Given its coordinating role, AMLA should be entrusted with the duty to developing the draft regulatory technical standards defining the detailed respective duties of the home and host supervisors of groups, and the modalities of cooperation between them. The supervision of the effective implementation of group policy on AML/CFT should be done in accordance with the principles and modalities of consolidated supervision as laid down in the relevant European sectoral legislation. **(AM 49)**
- (67) Directive (EU) 2015/849 included a general requirement for supervisors of home and host Member States to cooperate. Such requirements were subsequently strengthened to prevent that the exchange of information and cooperation between supervisors were prohibited or unreasonably restricted. However, in the absence of a clear legal framework, the set-up of AML/CFT supervisory colleges has been based on non-binding guidelines. It is therefore necessary to establish clear rules for the organisation of AML/CFT colleges and to provide for a coordinated, legally sound approach, recognising the need for structured interaction between supervisors across the Union. In line with its coordinating and oversight role, AMLA should be entrusted with developing the draft regulatory technical standards defining the general conditions that enable the proper functioning of AML/CFT supervisory colleges.
- (68) Exchange of information and cooperation between supervisors is essential in the context of increasingly integrated global financial systems. On the one hand, Union supervisors, including AMLA, should inform each other of instances in which the law of a third

country does not permit the implementation of the policies and procedures required under Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation]*. On the other hand, Member States should be enabled to authorise supervisors to conclude cooperation agreements providing for collaboration and exchanges of confidential information with their counterparts in third countries, in compliance with applicable rules for personal data transfers. Given its oversight role, AMLA should lend assistance as may be necessary to assess the equivalence of professional secrecy requirements applicable to the third country counterpart.

- (69) Directive (EU) 2015/849 allowed Member States to entrust the supervision of some obliged entities to self-regulatory bodies. However, the quality and intensity of supervision performed by such self-regulatory bodies has been insufficient, and under no or close to no public scrutiny. Where a Member State decides to entrust supervision to a self-regulatory body, it should also designate a public authority to oversee the activities of the self-regulatory body to ensure that the performance of those activities is in line with the requirements of this Directive. ***Such an authority should be operationally independent and autonomous and should carry out its functions free of political, government or industry influence or interference.*** (AM 50)

## COMP F – sanctions, administrative measures, whistleblower protection (Articles 39-44, Recitals 70-74)

### Articles 39-44

AMs Covered: 888 (Daly), 891 (Regner), 892 (Garicano and others), 893 (Peter-Hansen and other), 894 (Strugariu and other), 895 (Castaldo and other), 896 (Peter-Hansen and other), 194 (Rapporteurs), 195 (Rapporteurs), 196 (Rapporteurs), 902 (Peter-Hansen and other), 904 (Daly), 905 (Shirdewan), 906 (Daly), 907 (Jaki and other), 197 (Rapporteurs), 198 (Rapporteurs), 199 (Rapporteurs), 200 (Rapporteurs), 912 (Pereira), 915 (Garicano and others), 916 (Peter-Hansen and other), 917 (Regner), 918 (Regner), 919 (Garicano and others), 920 (Peter-Hansen and other), 201 (Rapporteurs), 921 (Garicano and others), 202 (Rapporteurs), 928 (Garicano and others), 203 (Rapporteurs), 204 (Rapporteurs), 929 (Daly), 205 (Rapporteurs), 932 (Strugariu and others), 933 (Peter-Hansen and other), 209 (Rapporteurs), 934 (Pereira), 935 (Beck), 206 (Rapporteurs), 937 (Daly and other), 938 (Strugariu and others), 939 (Daly and other), 207 (Rapporteurs), 208 (Rapporteurs), 941 (Regner), 942 (Daly and other), 944 (Peter-Hansen and other), 210 (Rapporteurs), 945 (Peter-Hansen and other), 211 (Rapporteurs),

AM falling: 886 (Ferber), 887 (Peter-Hansen and other), 889 (Daly), 890 (Daly), 897 (Schirdewan), 898 (Schirdewan), 899 (Daly), 900 (Ferber), 901 (Peter-Hansen and other), 903 (Schirdewan), , 908 (Ferber), 909 (Schirdewan), 910 (Garicano and others), 911 (Peter-Hansen and other), 913 (Radev and others), 914 (Jaki and other), 923 (Zanni and others), 924 (Daly), 925 (Daly), 926 (Daly), 927 (Daly), 930 (Garicano and others), 931 (Garicano and others), 936 (Schirdewan), 940 (Daly and other), 943 (Daly and other)

Placeholders: 922 (Radev and others)

### Recitals (70)-(74)

**AMs covered** : 51 (rapporteurs), 52 (rapporteurs), 327 (Pereira), 53 (rapporteurs), 54 (rapporteurs), 330 (Regner)

**AMs falling**: 324 (Pereira), 325 (Rookmaker), 326 (Beck), 328 (Ferber), 329 (Seekatz & other), TBC

### Section 4

#### Administrative sanctions and measures

#### *Article 39*

#### *General provisions*

1. Member States shall ensure that obliged entities can be held liable for breaches of the Regulation [*please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final*] in accordance with this Section.
2. Without prejudice to the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules on administrative sanctions and measures and ensure that supervisors may impose such sanctions and measures with



respect to breaches of this Directive, and shall ensure that they are applied. Any resulting sanction or measure imposed pursuant to this Section shall be effective, proportionate and dissuasive.

3. In the event of a breach of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*, Member States shall ensure that where obligations apply to legal persons, administrative sanctions and measures can be applied **[placeholder AM 888—LS separately and individually, to the legal person], to its senior management]** and to other natural persons who under national law are responsible for the breach. (AM 888)

Member States shall ensure that where supervisors identify breaches which are subject to criminal sanctions, they inform the authorities competent for investigating and prosecuting criminal activities in a timely manner.

4. Supervisors shall exercise their powers to impose administrative sanctions and measures in accordance with this Directive and with national law, in any of the following ways:
  - (a) directly;
  - (b) in collaboration with other authorities;
  - (c) under their responsibility by delegation to such other authorities;
  - (d) by application to the competent judicial authorities.

By *[3 months after the deadline for transposition of this Directive]*, Member States shall notify to the Commission and AMLA the information as regards the arrangements relating to the imposition of administrative sanctions or measures pursuant to this paragraph, including, where relevant, information whether certain sanctions or measures require the recourse to a specific procedure.

5. Member States shall ensure that, when determining the type and level of administrative sanctions or measures, supervisors 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;
  - (e-a) the damage caused by the breach to society at large (AM 890)**
  - (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. (AM 194)**

6. In the exercise of their powers to impose administrative sanctions and measures, supervisors shall cooperate closely **and, where relevant, coordinate their actions with**

~~other authorities concerned, including non-AML/CFT authorities~~ (AM 891, 892, 892, 893) in order to ensure that those administrative sanctions or measures produce the desired results and coordinate their action when dealing with cross-border cases.

7. By [2 years after the date of entry into force of this Directive], AMLA 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 assess the level of gravity of the breach as references for effective, proportionate and dissuasive sanctions, including in cases of repeated breaches.** (AM 195)

The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 38 to 41 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final].

#### Article 40

##### Administrative sanctions

1. Member States shall ensure that administrative sanctions are applied to obliged entities for serious, repeated or systematic breaches of the requirements laid down in the following provisions of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]:
  - (a) Chapter III (customer due diligence);
  - (b) Chapter V (reporting obligations);
  - (c) Article 56 (record-retention);
  - (d) ~~Section 1 of~~ Chapter II (internal **policies**, controls **and procedures of obliged entities**). (AM 894, 895 and 896)
2. Member States shall ensure that in the cases referred to in paragraph 1, the maximum pecuniary sanctions that can be applied amount at least to twice the amount of the benefit derived from the breach where that benefit can be determined, or at least EUR 1 000 000.
3. Member States shall ensure that, by way of derogation from paragraph 2, where the obliged entity concerned is a credit institution or financial institution (AMs 196, 902), the following sanctions can also be applied:
  - (a) in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 10 000 000 or 15 % of the total **global** annual turnover according to the latest available accounts approved by the management body, **whichever is higher**, where the 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 of the Council<sup>13</sup>, the relevant total annual turnover shall be the total **global** annual turnover or the corresponding type of income in accordance with the relevant accounting regime according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking; (AM 904, 905)

- (b) in the case of a natural person, maximum administrative pecuniary sanctions of at least EUR 5 000 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on *[please insert the date of entry into force of this Directive]* (AM 906).
- 4. Member States may empower competent authorities to impose administrative pecuniary sanctions exceeding the amounts referred to in paragraphs 2 and 3.
- 4a. ***Member States shall ensure that a legal person can be held liable for the breaches referred to in paragraph 1 where such breach have been committed for its benefit by any person, acting individually or as part of an organ of that legal person, that has a leading position within that legal person based on any of the following:***
  - (a) ***power to represent that legal person;***
  - (b) ***authority to take decisions on behalf of that legal person;***
  - (c) ***authority to exercise control within the that person.*** (AM 197)
- 4b. ***Member States shall ensure that a legal person can be held liable where the lack of supervision or control by persons referred to in paragraph 4 of this Article has made possible the commission by a person under their authority of the breaches referred to in Article 40(1) for the benefit of that legal person.*** (AM 198)

## Article 41

### *Administrative measures other than sanctions*

- 1. ***Member States shall ensure that supervisors are able to impose administrative measures other than sanctions on an obliged entity where they identify breaches of requirements of the Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] either in combination with administrative sanctions or in cases*** which are not deemed sufficiently serious to be punished with an administrative sanction, ~~they may decide to impose administrative measures on the obliged entity.~~ Member States shall ensure that the supervisors are able at least to: (AM 199)
  - (a) issue recommendations;
  - (b) order obliged entities to comply, including to implement specific corrective measures, ***within a concrete and reasonable timeline;*** (AM 200, 912)
  - (c) issue a public statement which identifies the natural or legal person and the nature of the breach;

<sup>13</sup> 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).

- (d) issue an order requiring the natural or legal person to cease the conduct and to desist from repetition of that conduct;
  - (e) where an obliged entity is subject to an authorisation, withdraw or suspend the authorisation ***or propose the imposition of these or similar measures where the corresponding powers rest with another authority***; (AM 907, 915, 916, 917)
  - (f) impose a temporary ban against any person discharging managerial responsibilities in an obliged entity, or any other natural person, held responsible for the breach, from exercising managerial functions in obliged entities, ***or propose the imposition of such measure or a removal of the person from a function within the obliged entity where the corresponding powers rest with another authority***. (AM 918, 919, 920).
2. When taking the administrative measures referred to in paragraph 1, supervisors shall be able to:
- (a) request an ad-hoc or regular submission of any document necessary for the performance of their tasks, including those to justify the process of implementation of the requested administrative measures ***without undue delay***; (AM 201)
  - (b) require the reinforcement of the arrangements, processes, mechanisms and strategies;
  - (c) require the obliged entity to apply a specific policy or requirements relating to individual clients, transactions or activities that pose high risks;
  - (d) require the implementation of measures to bring about the reduction of the money laundering or terrorist financing risks inherent in the activities and products of the obliged entity.
3. The administrative measures referred to in paragraph 1 shall be accompanied by a binding deadline for their effective implementation. Member States shall ensure that supervisors follow up and assess the effective implementation by the obliged entity of the actions requested.
4. Member States may empower supervisors to impose additional types of administrative measures to those referred to in paragraph 1.

#### *Article 42*

##### *Publication of administrative sanctions and measures*

1. Member States shall ensure that a decision imposing an administrative sanction or measure for breach of Regulation [*please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final*] ~~against which there is no appeal~~ shall be published by the supervisors on their official website ***in an accessible format, in the official language of the Member State in question and in English (AM 921), immediately after the person sanctioned is informed of that decision and it is no longer subject to internal review (AM 922).*** The publication shall include at least information on the type and nature of the breach and the identity of the persons responsible ***and whether the decision is subject to appeal.*** (AM 202) Member States shall not be obliged to apply this subparagraph to decisions imposing measures that are of an investigatory nature.

Where the publication of the identity of the persons responsible as referred to in the first subparagraph or the personal data of such persons is considered by the supervisors to be disproportionate following a case-by-case assessment, or where publication jeopardises the stability of financial markets or an on-going investigation, supervisors shall:

- (a) delay the publication of the decision to impose an administrative sanction or measure until the moment at which the reasons for not publishing it cease to exist;
  - (b) publish the decision to impose an administrative sanction or measure on an anonymous basis in a manner in accordance with national law, if such anonymous publication ensures an effective protection of the personal data concerned; in that case, the publication of the relevant data may be postponed for a reasonable period of time if it is provided that within that period the reasons for anonymous publication shall cease to exist;
  - (c) not publish the decision to impose an administrative sanction or measure at all in the event that the options set out in points (a) and (b) are considered insufficient to ensure one of the following:
    - (i) that the stability of financial markets would not be put in jeopardy;
    - (ii) the proportionality of the publication of the decision with regard to ***the damage to the obliged entity or to*** measures which are deemed to be of a minor nature.
2. Where Member States permit publication of decisions against which there is an appeal, supervisors shall also publish, immediately, on their official website such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose an administrative sanction or a measure shall also be published.
3. Supervisors ***or other competent authorities*** (AM 928) shall ensure that any publication in accordance with this Article shall remain on their official website for a period of five years after its publication. However, personal data contained in the publication shall only be kept on the official website of the competent authority for the period which is necessary in accordance with the applicable data protection rules and in any case for no more than 5 years.
- 3 a. ***Member States shall ensure that supervisors draw up a report on an annual basis containing relevant statistical information on the sanctions issued and measures taken. That report shall contain a summary of the breaches sanctioned and the amounts of fines. The report shall be made public. (AM 929)***
- ~~4. Member States shall ensure that legal persons can be held liable for the breaches referred to in Article 40(1) committed for their benefit by any person, acting individually or as part of an organ of that legal person, and having a leading position within the legal person based on any of the following:~~
  - ~~(a) power to represent the legal person;~~
  - ~~(b) authority to take decisions on behalf of the legal person;~~
  - ~~(c) authority to exercise control within the legal person. (AM 203)~~
- ~~5. Member States shall ensure that legal persons can be held liable where the lack of supervision or control by the persons referred to in paragraph 4 of this Article has made~~



~~possible the commission, by a person under their authority, of the breaches referred to in Article 40(1) for the benefit of that legal person. (AM 204)~~

### Article 43

#### Whistle-blower protection

1. Member States shall ensure that supervisory authorities, **FIUs**, as well as, where applicable, self-regulatory bodies, establish effective and reliable mechanisms to encourage the reporting of potential and actual breaches of **the national provisions transposing this Directive and of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]**. (AM 205, 932, 933)

For that purpose, they shall provide one or more secure communication channels for the reporting referred to in the first subparagraph. Such channels shall ensure that the identity of persons providing information is **encrypted and** known only to the supervisory authority, or, where applicable, self-regulatory body. **Where reporting relates to potential or actual breaches by employees or the management body of the supervisory authorities or, where applicable, self-regulatory body, the identity of the person should only be known by the specific body responsible for receiving reports.** (AM 206, 934, 935)

2. The mechanisms referred to in paragraph 1 shall include at least:
  - (a) specific procedures for the receipt of reports on breaches **by both anonymous and non-anonymous individuals** and their follow-up; (AM 937)
  - (b) appropriate protection **as well as access to legal and financial advice** for employees, **board members, shareholders, contractors, subcontractors, suppliers, trainees and former workers** (AM 939) or persons in a comparable position, of obliged entities who report breaches committed within the obliged entity, **as well as for any individual who has independent knowledge or who after independent evaluation of publicly-available information provides information to the competent authorities;**(AM 938)
  - (c) appropriate protection for the accused person;
  - (d) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in compliance with the principles laid down in Regulation (EU) 2016/679;
  - (e) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the obliged entity, **supervisor or, where applicable, self-regulatory body**, unless disclosure is required by national law in the context of further investigations or subsequent judicial proceedings. (AM 207)
3. Member States shall ensure that individuals, including employees and representatives of the obliged entity **or competent authorities or of supervisory authorities or self-regulatory bodies** who report potential or actual breaches of **the national provisions transposing this Directive or Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]** ~~internally or to the FIU, as provided in paragraph 1,~~ are legally protected **in accordance with Directive EU**

**2019/1937 of the European Parliament and of the Council<sup>14</sup> (AM 941)** from being exposed to threats, retaliatory or hostile action, and in particular from adverse or discriminatory employment actions. (AM 208, 942)

Member States shall ensure that individuals who are exposed to threats, hostile actions, or adverse or discriminatory employment actions for reporting potential or actual breaches of **the national provisions transposing Directive or of Regulation** [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] **internally or to the mechanisms internally or to the FIU pursuant to paragraph 1** are entitled to present a complaint in a safe manner to the respective competent authorities. Without prejudice to the confidentiality of information gathered by the FIU, Member States shall also ensure that such individuals have the right to effective remedy to safeguard their rights under this paragraph. (AM 209)

#### Article 44

##### *Exchange of information on sanctions*

1. Member States shall ensure that their supervisors and, where relevant, the national authority overseeing self-regulatory bodies in their performance of supervisory functions inform AMLA, **and, where relevant, the FIUs of the Member States concerned**, of all administrative sanctions and measures imposed in accordance with this Section, including of any appeal in relation thereto and the outcome thereof. Such information shall also be shared with other supervisors when the administrative sanction or measure concerns an entity operating in two or more Member States. (AM 210, 944)
2. AMLA shall maintain **a database** on its website **with information on the sanctions applied per obliged entity and** links to each supervisor's publication of administrative sanctions and measures imposed in accordance with Article 42, and shall show the time period for which each Member State publishes administrative sanctions and measures. (AM 211, 945)

#### **Recitals (70)-(74)**

**AMs covered** : 51 (rapporteurs), 52 (rapporteurs), 327 (Pereira), 53 (rapporteurs), 54 (rapporteurs), 330 (Regner)

**AMs falling**: 324 (Pereira), 325 (Rookmaker), 326 (Beck), 328 (Ferber), 329 (Seekatz & other), TBC

#### **Recitals (70)-(74)**

- (70) The importance of combating money laundering and terrorist financing should result in Member States laying down effective, proportionate and dissuasive administrative sanctions and measures in national law for failure to respect the requirements of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation]. National supervisors should be empowered by Member States to impose such measures to obliged

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<sup>14</sup> **Directive EU 2019/1937 of the European Parliament and of the Council of 23 October 2019 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).**

entities to remedy the situation in the case of breaches and, where the breach so justifies, issue pecuniary sanctions. The range of sanctions and measures should be sufficiently broad to allow Member States and competent authorities to take account of the differences between obliged entities, in particular between credit institutions ~~and~~, financial institutions and other obliged entities, as regards their size, characteristics and the nature of the business. (AM 51)

- (71) Member States currently have a diverse range of administrative sanctions and measures for breaches of the key preventative provisions in place and an inconsistent approach to investigating and sanctioning violations of anti-money laundering requirements, nor is there a common understanding among supervisors as to what should constitute a "serious" violation and thus distinguish when an administrative sanction should be imposed. That diversity is detrimental to the efforts made in combating money laundering and terrorist financing and the Union's response is fragmented. Therefore, common criteria for determining the most appropriate supervisory response to breaches should be laid down and a range of administrative measures that the supervisors could impose when the breaches are not sufficiently serious to be punished with an administrative sanction should be provided. In order to incentivise obliged entities to comply with the provisions of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation]*, it is necessary to strengthen the dissuasive nature of administrative sanctions. Accordingly, the minimum amount of the maximum penalty that can be imposed in case of serious breaches of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation]* should be raised, ***in a proportionate and adequate way. In that regard, it is essential that draft regulatory technical standards are developed to define indicators to classify the level of gravity of breaches and criteria to be taken into account when setting the level of sanctions, including minimum and maximum values of pecuniary sanctions in accordance with the level of gravity, and to address appropriately situations of repeated breaches. Member States should also ensure that legal persons can be held liable for breaches committed for their benefit by any person, acting individually or as part of an organ of that legal person and having a leading position within the legal person, or where the lack of supervision or control has made possible the commission of breaches.*** In transposing this Directive, Member States should ensure that the imposition of administrative sanctions and measures, and of criminal sanctions in accordance with national law, does not breach the principle of *ne bis in idem*. (AMs 52, 327)
- (72) Obligated entities can benefit from the freedom to provide services and to establish across the internal market to offer their products and services across the Union. An effective supervisory system requires that supervisors are aware of the weaknesses in obliged entities' compliance with AML/CFT rules. It is therefore important that supervisors are able to inform one another of administrative sanctions and measures imposed on obliged entities, when such information would be relevant for other supervisors too.
- (73) Publication of an administrative sanction or measure for breach of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation]* can have a strong dissuasive effect against repetition of such breach. It also informs other entities of the money laundering and financing of terrorism risks associated with the sanctioned obliged entity before entering into a business relationship and assists supervisors in other Member States in relation to the risks associated with an obliged entity when it operates in their Member State on a cross-border basis. For those reasons, the requirement to publish decisions on sanctions ***against which there is no appeal where such decision is no longer subject to internal review*** should be confirmed. However, any such publication should be proportionate and, in the taking of a decision whether to publish an

- administrative sanction or measure, supervisors should take into account the gravity of the breach and the dissuasive effect that the publication is likely to achieve. (AM 53)
- (74) There have been a number of cases where employees who have reported their suspicions of money laundering *or of violations of AML/CFT requirements* have been subjected to threats or hostile action. It is crucial that this issue be addressed to ensure effectiveness of the AML/CFT system. Member States should be aware of this problem and should ~~do whatever they can to~~ protect individuals, including employees ~~and~~, *such as the data protection officer and AML compliance officer, and other* representatives of the obliged entity, from such threats or hostile action, and to provide, in accordance with Union and national law, *in particular Directive EU 2019/1937 of the European Parliament and of the Council<sup>12</sup>* appropriate protection to such persons, particularly with regard to their right to the protection of their personal data and their rights to effective judicial protection and representation. *Member States should apply the same approach with regard to employees from competent authorities, in particular staff from supervisory authorities or self-regulatory bodies who report potential or actual breaches of AML/CFT requirements.* (AM 54, 330)

## **COMP G – AML/CFT cooperation and exchange of information, data protection and final provisions (Articles 45-60, Recitals 75-97)**

### **Articles 45-60**

**AMs Covered:** 946 (Strugariu), 947 (Peter-Hansen and other), 212 (Rapporteurs), 948 (Garicano and others), 214 (Rapporteurs), 950 (Peter-Hansen and others), 951 (Garicano and others), 952 (Regner), 953 (Peter-Hansen), 954 (Garicano and others), 955 (Regner), 956 (Peter-Hansen and other), 957 (Garicano and others), 215 (Rapporteurs), 958 (Peter-Hansen and other), 216 (Rapporteurs), 960 (Peter-Hansen and other), 217 (Rapporteurs), 961 (Peter-Hansen and other), 963 (Strugariu and other), 965 (Peter-Hansen and other), 966 (Regner), 967 (Regner), 968 (Garicano and others), 969 (Peter-Hansen and other), 970 (Regner), 971 (Garicano and others), 972 (Garicano and others), 973 (Zile and other), 974 (Garicano and others), 975 (Peter-Hansen and other), 976 (Peter-Hansen and other), 977 (Peter-Hansen and other), 978 (Regner), 979 (Garicano and other), 980 (Regner), 981 (Garicano and others), 982 (Peter-Hansen and others), 983 (Peter-Hansen), 984 (Garicano and others), 985 (Regner), 987 (Regner), 988 (Garicano and others), 991 (Garciano and others), 992 (Peter-Hansen), 993 (Regner), 218 (Rapporteurs), 219 (Rapporteurs), 220 (Rapporteurs), 994 (Garicano and others), 995 (Daly), 221 (Rapporteurs), 222 (Rapporteurs), 995 (Daly), 221 (Rapporteurs), 222 (Rapporteurs), 223 (Rapporteurs), 224 (Rapporteurs), 225 (Rapporteurs), 1000 (Regner)

**AMs falling:** 959 (Garraud and others), 962 (Garraud and others), 964 (Garicano and others), 986 (Peter-Hansen and other), 989 (Peter-Hansen and other), 990 (Garicano and others), 996 (Daly), 997 (Daly), 998 (Daly), 999 (Daly)

**Placeholder:** 213 (Rapporteurs), 949 (Peter-Hansen and others)

### **Recitals (75)-(97)**

**AMs covered:** 55 (rapporteurs), 331 (Strugariu & others), 56 (rapporteurs), 332 (Radev & others), 57 (rapporteurs), 333 (Zile & other), 335 (Garicano & others), 58 (rapporteurs), 336 (Strugariu & others), 59 (rapporteurs), 337 (Pereira), 60 (rapporteurs), 339 (Seekatz & other), 340 (Garicano & others), 61 (rapporteurs)

**AMs falling:** 334 (Garraud & others), 338 (Garraud & others)

## **CHAPTER V COOPERATION**

### **Section 1**



## AML/CFT cooperation

### Article 45

#### General provisions

1. Member States shall ensure that policy makers, the FIUs, supervisors, and other competent authorities, as well as **law enforcement authorities and** tax authorities have effective mechanisms to enable them to cooperate and coordinate domestically **and at Union level** concerning the development and implementation of policies and activities to combat money laundering and terrorist financing and to prevent the non-implementation and evasion of **targeted financial sanctions**, including with a view to fulfilling their obligations under Article 8. (AM 212, 667, 668, 669, 946, 947)

***1a. Member States shall ensure that [policy makers, the FIUs, supervisors and other] competent authorities have effective mechanisms to enable them to cooperate with AMLA, Europol, Eurojust, EPPO under the applicable Union law concerning the development and implementation of policies and activities to combat money laundering and terrorist financing and to prevent the non-implementation and evasion of targeted financial sanctions.***

[Part on FIU access to data from automatic exchange of information moved to article 18]

- 1 b. With regard to targeted financial sanctions, Member States shall ensure that FIUs, supervisors, competent authorities in charge of the registers pursuant to Chapter II, competent authorities in charge of targeted financial sanctions, authorities in charge of tracing and seizing or freezing and confiscating assets and other competent authorities, have effective mechanisms in place to exchange information with regard to compliance, supervision and enforcement of targeted financial sanctions, including for the purpose of collecting, processing and disclosing relevant data relating to persons subject to targeted financial sanctions. (AM 948)*
2. With regard to beneficial ownership information obtained by competent authorities pursuant to Chapter IV of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] and Section I of Chapter II of this Directive, Member States shall ensure that competent authorities are able to provide such information to the competent authorities of other Member States or third countries in a timely manner and free of charge.
3. Member States shall not prohibit or place unreasonable or unduly restrictive conditions on the exchange of information or assistance between competent authorities, **supervisors and non-AML/CFT authorities** for the purposes of this Directive. Member States shall ensure that competent authorities **supervisors and non-AML/CFT authorities** do not refuse a request for assistance on the grounds that: (AM 950, 951, 952)
  - (a) the request is also considered to involve tax matters;
  - (b) national law requires obliged entities to maintain secrecy or confidentiality, except in those cases where the relevant information that is sought is protected by legal privilege or where legal professional secrecy applies, as provided for in Article 51(2) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final];

- (c) there is an **analysis**, inquiry, investigation or proceeding underway in the requested Member State, unless the assistance would impede that **analysis**, inquiry, investigation or proceeding; (AM 214, 953, 954)
  - (d) the nature or status of the requesting counterpart competent authority, **supervisor or non-AML/CFT authority** is different from that of requested competent authority, **supervisor or non-AML/CFT authority**. (AM 955, 956, 957)
- 3a. Member States shall ensure that their supervisors have prompt access to any information they require to fulfil their tasks. Supervisors and competent authorities, including FIUs, shall have a duty to cooperate between each other (AM 820).**

#### Article 46

*Communication of the list of ~~the~~ competent authorities **and registers** (AM 215, 958)*

1. In order to facilitate and promote effective cooperation, and in particular the exchange of information, Member States shall communicate to the Commission and AMLA:
  - (a) the list of supervisors responsible for overseeing the compliance of the obliged entities with the requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*, as well as, where relevant, name of the public authority overseeing self-regulatory bodies in their performance of supervisory functions under this Directive, and their contact details;
  - (b) the contact details of their FIU;
  - (ba) the contact details of the entity in charge of the central registers referred to in Article 10 of this Directive; (AM 216, 960)**
  - (bb) the contact details necessary to obtain information on real estate data, certain goods and bank accounts; (AM 217, 961)**
  - (c) the list of other competent national authorities.
2. For the purposes of paragraph 1, the following contact details shall be provided:
  - (a) the name and role of the contact person;
  - (b) the professional email address and phone number of the contact person.
3. Member States shall ensure that the information provided to the Commission and AMLA pursuant to paragraph 1 is updated as soon as a change takes place.
4. AMLA shall publish a register of the authorities referred to in paragraph 1 on its website and facilitate the exchange of information referred to in paragraph 2 between competent authorities. The authorities in the register shall, within the scope of their powers, serve as a contact point for the counterpart competent authorities. FIUs and supervisory authorities shall also serve as a contact point for AMLA.

#### Article 47

## Cooperation with AMLA

FIUs, supervisory authorities, **competent authorities and non-AML/CFT authorities** shall cooperate with AMLA and shall provide it with all the information necessary to allow it to carry out its duties under this Directive, under Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* and under Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]*. (AM 963, 964, 965)

### Section 2

#### Cooperation with other authorities and exchange of confidential information

##### Article 48

###### *Cooperation in relation to credit or financial institutions (AM 966)*

1. Member States shall ensure that financial supervisors, **non-AML/CFT authorities**, FIUs and authorities competent for the supervision of credit **or financial** institutions under other legal acts cooperate closely with each other within their respective competences and provide each other with information relevant for the performance of their respective tasks. Such cooperation and information exchange shall not impinge on an ongoing inquiry, investigation or proceedings in accordance with the criminal or administrative law of the Member State where **supervisors, non-AML/CFT authorities, FIUs** or authority entrusted with competences for the supervision of credit **or financial** institutions under other legal acts is located and shall not affect obligations of professional secrecy as provided in Article 50(1). (AM 967, 968, 969)
2. Member States shall ensure that, where financial supervisors, **non-AML/CFT authorities or FIUs** identify weaknesses in the AML/CFT internal control system and application of the requirements of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]* of a credit or **financial** institution which materially increase the risks to which the institution is or might be exposed, the financial supervisor, **non-AML/CFT authority or FIU** immediately notifies the European Banking Authority (EBA) and the authority or body that supervises the credit institution **affected** in accordance with ~~Directive (EU) 2013/36,~~ **applicable Union law**, including the ECB acting in accordance with Council Regulation (EU) 1024/2013<sup>15</sup>. (AM 970, 971)

In the event of potential increased risk, **the respective** supervisors shall **cooperate and share information** with the authorities supervising the institution in accordance with **applicable Union law** and draw up a common assessment to be notified to EBA **by the supervisor who first sent the notification**. AMLA shall be kept informed of any such notifications. (AM 972)

3. Member States shall ensure that, where financial supervisors find that a credit institution has refused to enter **into or continue** ~~into~~ a business relationship but the documented customer due diligence pursuant to Article 17(2) does not justify such

<sup>15</sup> Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

refusal, they shall inform the authority responsible for ensuring compliance by that institution with Directive (EU) 2014/92 or Directive (EU) 2015/2366. (AM 973)

4. Member States shall ensure that financial supervisors cooperate with resolution authorities as defined in Article 3(18) of Directive 2014/59/EU or designated authorities as defined in Article 2(1)(18) of Directive 2014/49/EU. Financial supervisors shall inform such authorities of the outcome of the customer due diligence measures applied pursuant to Chapter III of Regulation [*please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final*] and of any account that has been suspended by the FIU pursuant to Article 20.
5. Financial supervisors and FIUs shall report on a yearly basis to AMLA on their cooperation with other authorities pursuant to this Article.
6. By [*2 years after the date of transposition of this Directive*], AMLA shall, in consultation with EBA, issue guidelines on cooperation between financial supervisors and the authorities referred to in paragraphs 2, 3 and 4, including on the level of involvement of FIUs in such cooperation. (AM 974)

#### Article 49

##### *Cooperation in relation to auditors*

1. Member States shall ensure that supervisors in charge of auditors and, where relevant, public authorities overseeing self-regulatory bodies pursuant to Chapter IV of this Directive, their FIU and the public authorities competent for overseeing statutory auditors and audit firms pursuant to Article 32 of Directive 2006/43/EC of the European Parliament and of the Council<sup>16</sup> and Article 20 of Regulation (EU) 537/2014 of the European Parliament and of the Council<sup>17</sup> cooperate closely with each other within their respective competences and provide each other with information relevant for the performance of their respective tasks.

Confidential information exchanged pursuant to this Article shall be used by the authorities referred to in the first subparagraph solely for the exercise of their functions within the scope of this Directive or the other Union acts referred to in the first subparagraph and in the context of administrative or judicial proceedings specifically related to the exercise of those functions.

2. Member States may prohibit the authorities referred to in paragraph 1 from cooperating when such cooperation, including the exchange of information, would impinge on an ongoing inquiry, *analysis*, investigation or proceedings ***or would prejudice the prohibition of disclosure under article 54 of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420final]*** in accordance with the criminal or administrative law of the Member State where the authorities are located. (AM 975)

#### Article 50

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<sup>16</sup> Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87–107).

<sup>17</sup> Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158, 27.5.2014, p. 77).

*Exchange of information in relation to credit and financial institutions among entities bound by professional secrecy*

1. Member States shall require that all persons working for or who have worked for financial supervisors, **FIUs** and auditors or experts acting on behalf of financial supervisors **or FIUs** be bound by the obligation of professional secrecy. (AM 976)

Without prejudice to cases covered by criminal investigations and prosecutions under Member States and Union law and information provided to the FIU pursuant to Article 32, confidential information which the persons referred to in the first subparagraph receive in the course of their duties under this Directive may be disclosed only in summary or aggregate form, in such a way that individual credit and financial institutions cannot be identified.

2. Paragraph 1 shall not prevent the exchange of information between:
  - (a) financial supervisors, whether within a Member State or in different Member States, including AMLA when acting in accordance with Article 5(2) of Regulation *[please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]*;
  - (b) financial supervisors, **competent authorities** and FIUs; (AM 977, 978, 979)
  - (c) financial supervisors and authorities in charge of **supervising** credit and financial institutions in accordance with other legislative acts relating to the supervision of credit and financial institutions, including the ECB acting in accordance with Regulation (EU) 1024/2013, whether within a Member State or in different Member States. (AM 980, 981, 982)

**(c a) financial supervisors, the national central banks that are members of the European System of Central Banks (ESCB), and the ECB. (AM 983, 984, 985)**

For the purposes of the **this** paragraph, the exchange of information shall be subject to the professional secrecy requirements provided for in paragraph 1 **or equivalent requirements provided under Union law**. (AM 987, 988)

3. Any authority that receives confidential information pursuant to paragraph 2 shall only use this information:
  - (a) in the discharge of its duties under this Directive or under other legislative acts in the field of AML/CFT, of prudential regulation and supervision of credit and financial institutions, including sanctioning;
  - (b) in an appeal against a decision of the authority, including court proceedings;
  - (c) in court proceedings initiated pursuant to special provisions provided for in Union law adopted in the field of this Directive or in the field of prudential regulation and supervision of credit and financial institutions.

*Article 51*

*Exchange of information among supervisors and with other authorities*

1. With the exception of cases covered by Article 51(2) of Regulation *[please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final]*, Member States shall authorise the exchange of information between:



- (a) supervisors and the public authorities overseeing self-regulatory bodies pursuant to Chapter IV of this Directive, whether in the same Member State or in different Member States;
- (b) supervisors and the authorities responsible by law for the supervision of financial markets ***or credit or financial institutions*** in the discharge of their respective supervisory functions; (AM 991, 992, 993)
- (c) supervisors in charge of auditors and, where relevant, public authorities overseeing self-regulatory bodies pursuant to Chapter IV of this Directive, and the public authorities competent for overseeing statutory auditors and audit firms pursuant to Article 32 of Directive 2006/43/EC and Article 20 of Regulation (EU) 537/2014, including authorities in different Member States.
- (ca) ***supervisors and, where relevant, the EPPO with regard to any criminal conduct in respect of which EPPO could exercise its competence in accordance with Article 22 or Article 25(2) or (3) of Council Regulation (EU) 2017/1939<sup>18</sup>; (AM 218)***
- (cb) ***supervisors and, where relevant, the European Anti-Fraud Office (OLAF) with regard to possible cases of fraud, corruption or any other illegal activity affecting the financial interests of the Union pursuant to Article 8 of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>19</sup>; (AM 219)***

The professional secrecy requirements laid down in Article 50(1) and (3) shall not prevent such exchange of information.

Confidential information exchanged pursuant to this paragraph shall only be used in the discharge of the duties of the authorities concerned, and in the context of administrative or judicial proceedings specifically related to the exercise of those functions. The information received shall in any event be subject to professional secrecy requirements at least equivalent to those referred to in Article 50(1).

2. Member States may authorise the disclosure of certain information to other national authorities responsible by law for the supervision of the financial markets, or with designated responsibilities in the field of combating or investigating money laundering, its predicate offences or terrorist financing. The professional secrecy requirements laid down Article 50(1) and (3) shall not prevent such disclosure.

However, confidential information exchanged pursuant to this paragraph shall only be used for the purpose of performing the legal tasks of the authorities concerned. Persons having access to such information shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 50(1).

3. Member States may authorise the disclosure of certain information relating to the supervision of obliged entities for compliance with the requirements of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation -

<sup>18</sup> ***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).***

<sup>19</sup> ***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 1074/1999 (OJ L 248, 18.9.2013, p. 1).***

COM/2021/420 final] to parliamentary inquiry committees, ***including those set up by the European Parliament***, courts of auditors and other entities in charge of enquiries in their Member State, under the following conditions: (AM 220)

- (a) the entities have a precise mandate under national law to investigate or scrutinise the actions of supervisors or authorities responsible for laws on such supervision;
- (b) the information is strictly necessary for fulfilling the mandate referred to in point (a);
- (c) the persons with access to the information are subject to professional secrecy requirements under national law at least equivalent to those referred to in paragraph 1;
- (d) where the information originates in another Member State, it shall not be disclosed without the express consent of the supervisor which disclosed it and solely for the purposes for which that supervisor gave its consent.

### Section 3

#### Guidelines on cooperation

##### *Article 52*

##### *AML/CFT cooperation guidelines*

By [2 years after the date of transposition of this Directive], AMLA shall, in cooperation with the ECB, the European Supervisory Authorities, Europol, Eurojust, and the European Public Prosecutor's Office, issue guidelines on:

- (a) the cooperation between competent authorities under Section 1 of this Chapter, as well as with the authorities referred to under Section 2 of this Chapter and the authorities in charge of the registers referred to in Section 1 of Chapter II of this Directive, to prevent money laundering and terrorist financing;
- (a a) the cooperation between the Union bodies referred to in this Article; (AM 994)***
- (b) the procedures to be used by authorities competent for the supervision or oversight of obliged entities under other Union acts to take into account money laundering and terrorist financing concerns in the performance of their duties under their respective Union acts.

## CHAPTER VI

### DATA PROTECTION

##### *Article 53*

##### *Processing of certain categories of personal data*

1. To the extent that it is strictly necessary for the purposes of this Directive, competent authorities may process special categories of personal data referred to in Article 9(1) of Regulation (EU) 2016/679 and personal data relating to criminal convictions and offences referred to in Article 10 of that Regulation subject to appropriate safeguards for the rights and freedoms of the data subject ~~and~~, ***in addition*** to the following ~~additional~~ safeguards: (AM 221)

- (a) processing of such data shall be performed only on a case-by-case basis by the staff of each competent authority that have been specifically designated and authorised to perform those tasks;
  - (b) staff of the competent authorities shall maintain high professional standards of confidentiality and data protection, they shall be of high integrity and are appropriately skilled, *including in detecting biases in and in the ethical use of big data sets*; (AM 222)
  - (c) technical and organisational measures shall be in place to ensure the security of the data to high technological standards, *and to ensure that the processing of the data does not lead to biased and discriminatory outcomes*; (AM 223)
  - (ca) **any** automated decision-making shall include human review and the possibility for human intervention. (AM 224)
2. The safeguards referred to in paragraph 1 shall also apply to the processing for the purposes of this Directive of special categories of data referred to in Article 10(1) of Regulation (EU) 2018/1725 and personal data relating to criminal convictions and offences referred to in Article 11 of that regulation by Union institutions, agencies or bodies.

## CHAPTER VII

### FINAL PROVISIONS

#### *Article 54*

#### *Committee*

1. The Commission shall be assisted by the Committee on the Prevention of Money Laundering and Terrorist Financing established by Article 28 of Regulation *[please insert reference – proposal for a recast of Regulation (EU) 2015/847 - COM/2021/422 final]*. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

#### *Article 55*

#### *Transitional management of FIU.net*

At the latest by *[3 years after the date of entry into force of this Directive]*, the Commission shall transfer to AMLA the management of FIU.net.

Until such transfer is completed, the Commission shall lend the necessary assistance for the operation of FIU.net and the exchange of information between FIUs within the Union. To this end, the Commission shall regularly convene meetings of the EU FIU's Platform composed of representatives from Member States' FIUs in order to oversee the functioning of FIU.net.

#### *Article 55 a*

#### *Continuity of application of adopted instruments*

***1. All guidelines, opinions and recommendations issued by the European Supervisory Authorities in accordance with Directive (EU) 2015/849 and Regulations (EU) No1093/2010,***

*(EU) No 1094/2010 and (EU) No 1095/2010 shall continue to apply until amended or repealed by AMLA.*

*2. All regulatory technical standards adopted by the Commission in accordance with Directive (EU) 2015/849 and Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 shall continue to apply until amended or repealed by the Commission through delegated acts. (AM 1000)*

#### *Article 56*

##### *Review*

*By [5 years from the date of transposition of this Directive], and every three years thereafter, the Commission shall present a report to the European Parliament and to the Council on the implementation of this Directive.*

#### *Article 56a*

##### *Review relating to availability and access to beneficial ownership information*

*By ... [3 years after the date of entry into force of this Directive], the Commission shall, in close collaboration with AMLA, conduct an assessment of the following:*

- a) the functioning of the beneficial owners registers established in the Member States as well as the interconnected system for searches through the European Central Platform;*
- b) the feasibility of establishing a centralised European beneficial ownership register;*
- c) the feasibility of the establishment of a European Know-Your-Customer (KYC) / Customer Due Diligence (CDD) Register.*

*That assessment shall take into account the potential risks for the de-risking of natural and legal persons, and the mitigation of administrative burdens on both the competent authorities of the Member States and the obliged entities, the added-value in terms of data quality and mitigating measures to limit shortcomings.*

*By... [3 years after the date of entry into force of this Directive], the Commission shall provide a report to the European Parliament and the Council on the results of such assessment. That report may include recommendations for improving the central registers established at national level. The Commission may submit, if appropriate, a legislative proposal to the European Parliament and the Council on the establishment of a centralised European Beneficial ownership register or a European KYC/CDD Register. (AM 544, 583, 584)*

#### *Article 56b*

##### *Review relating to registration obligations of high-value assets or goods*

*By ... [2 years after the date of entry into force of this Directive], the Commission shall, in close collaboration with AMLA, conduct an assessment of the feasibility of expanding the registration obligations for other high-value goods or assets outside of free zones, potentially putting the registration burden on obliged entities. The assessment should evaluate the proportionality of establishment of such register and the cost to benefits assessment must have a significant role in such assessment.*

That assessment shall take into account the potential risks of evasion of registration of high-value goods or assets by moving those goods and assets outside of the Union internal market or by other means and compare them to the costs incurred, as well as proportionality.

By... [2 years after the date of entry into force of this Directive], the Commission shall provide a report to the European Parliament and the Council on the results of such assessment. That report may include recommendations for expanding the registration obligations. The Commission may submit, if appropriate, a legislative proposal to the European Parliament and the Council on new registration obligations.

#### Article 56c

##### Review relating to functioning of high-value assets or goods registers and systems

By ... [5 years after the date of entry into force of this Directive], the Commission shall, in close collaboration with AMLA, conduct an assessment of the following:

a) the functioning of the register and data retrieval systems for motor vehicles, aircrafts and watercrafts as referred to in article 16b;

b) the feasibility of expanding the registration obligations for other high-value goods or assets outside of free zones, potentially putting the registration burden on obliged entities. The assessment should evaluate the proportionality of establishment of such register and the cost to benefits assessment must have a significant role in such assessment;

c) the functioning of the free zone asset registers as referred to in article 16c;

e) the feasibility of broader registration obligations for high-value goods and assets in free zones;

That assessment shall take into account the potential risks of evasion of registration of high-value goods or assets by moving those goods and assets outside of the Union internal market or by other means and compare them to the costs incurred, as well as proportionality.

By... [5 years after the date of entry into force of this Directive], the Commission shall provide a report to the European Parliament and the Council on the results of such assessment. That report may include recommendations for improving the registers, data retrieval systems and registration obligations. The Commission may submit, if appropriate, a legislative proposal to the European Parliament and the Council on new registration obligations.

#### Article 57

##### Repeal

Directive (EU) 2015/849 is repealed with effect from [date of transposition].

References to the repealed Directive shall be construed as references to this Directive and to Regulation [please insert reference – proposal for Anti-Money Laundering Regulation] in accordance with the correlation table set out in the Annex.



## Article 58

### Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by *[please insert date - 3 2 years after the date of entry into force]* at the latest. They shall forthwith communicate to the Commission the text of those provisions. (AM 225)

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

## Article 59

### Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

## Article 60

### Addressees

This Directive is addressed to the Member States.

## Recitals (75)-(97)

- (75) The new fully-integrated and coherent anti-money laundering and counter-terrorist financing policy at Union level, with designated roles for both Union and national competent authorities and with a view to ensure their smooth and constant cooperation. In that regard, cooperation between all national and Union AML/CFT authorities is of the utmost importance and should be clarified and enhanced ***in order to combat money laundering and terrorist financing and to prevent the non-implementation and evasion of targeted financial sanctions***. Internally, it remains the duty of Member States to provide for the necessary rules to ensure that policy makers, the FIUs, supervisors, including AMLA, and other competent authorities involved in AML/CFT, as well as tax authorities and law enforcement authorities when acting within the scope of this Directive, have effective mechanisms to enable them to cooperate and coordinate, including ***with other EU bodies and*** through a restrictive approach to the refusal by competent authorities to cooperate and exchange information at the request of another competent authority. (AMs 55, 331)
- (76) In order to facilitate and promote effective cooperation, and in particular the exchange of information, Member States should be required to communicate to the Commission and AMLA the list of their competent authorities and ***registers and their*** relevant contact details. ***This list should take into account existing expertise and available networks, such as the expertise gained by Member States' competent authorities and third countries through Europol, in their fight against money laundering/terrorist financing.*** (AM 56, 332)

- (77) The risk of money laundering and terrorist financing can be detected by all supervisors in charge of credit institutions. Information of a prudential nature relating to credit and financial institutions, such as information relating to the fitness and properness of directors and shareholders, to the internal control mechanisms, to governance or to compliance and risk management, is often indispensable for the adequate AML/CFT supervision of such institutions. Similarly, AML/CFT information is also important for the prudential supervision of such institutions. Therefore, cooperation and exchange of information with AML/CFT supervisors and FIU should be extended to all competent authorities in charge of the supervision of those obliged entities in accordance with other Union legal instruments, such as Directive (EU) 2013/36<sup>13</sup>, Directive (EU) 2014/49<sup>14</sup>, Directive (EU) 2014/59<sup>15</sup>, Directive (EU) 2014/92<sup>16</sup> and Directive (EU) 2015/2366 of the European Parliament and of the Council<sup>17</sup>. To ensure the effective implementation of this cooperation, Member States should inform the AMLA annually of the exchanges carried out.
- (78) Cooperation with other authorities competent for supervising credit institutions under Directive (EU) 2014/92 and Directive (EU) 2015/2366 has the potential to reduce unintended consequences of AML/CFT requirements. Credit institutions may choose to terminate or restrict business relationships with customers or categories of customers in order to avoid, rather than manage, risk. Such de-risking practices may weaken the AML/CFT framework and the detection of suspicious transactions, as they push affected customers to resort to less secure or unregulated payment channels to meet their financial needs. At the same time, widespread de-risking practices in the banking sector may lead to financial exclusion for certain categories of payment entities or consumers. Financial supervisors are best placed to identify situations where a credit institution has refused to enter into a business relationship despite possibly being obliged to do so on the basis of the national law implementing Directive (EU) 2014/92 or Directive (EU) 2015/2366, and without a justification based on the documented customer due diligence. Financial supervisors should alert the authorities responsible for ensuring compliance by financial institution with Directive (EU) 2014/92 or Directive (EU) 2015/2366 when such cases arise.
- (78a) *Member States should ensure that credit institutions and financial institutions provide legal persons and natural persons who are legally resident in the Union, including natural persons with no fixed address, asylum seekers and natural persons who have not been granted a residence permit but whose expulsion is impossible for legal or factual reasons, the right to open and use a payment account with basic features with those obliged entities located in their territory. Such a right should apply irrespective of the natural person's place of residence. Such a right does not, in any way, exempt obliged entities from their obligations under this Directive and the AML Regulation, in particular their obligation to ensure that proper due diligence checks are carried out on the persons in question. (AMs 57)*
- (79) The cooperation between financial supervisors and the authorities responsible for crisis management of credit institutions and investment firms, such as in particular Deposit Guarantee Scheme designated authorities and resolution authorities, is necessary to reconcile the objectives to prevent money laundering under this Directive and to protect financial stability and depositors under the Directives 2014/49/EU and 2014/59/EU. Financial supervisors should oversee the performance *and quality* of customer due diligence *processes* where the credit institution has been determined failing or likely to fail or when the deposits are defined as unavailable, and the reporting of any suspicious transactions to the FIU. Financial supervisors should inform the authorities responsible

for crisis management of credit institutions and investment firms of any relevant outcome from the customer due diligence performed and of any account that has been suspended by the FIU. (AM 333)

- (80) To facilitate such cooperation in relation to credit institutions, AMLA, in consultation with the European Banking Authority, should issue guidelines specifying the main elements of such cooperation including how information should be exchanged.
- (81) Cooperation mechanisms should also extend to the authorities in charge of the supervision and oversight of auditors, as such cooperation can enhance the effectiveness of the Union anti-money laundering framework.
- (82) The exchange of information and the provision of assistance between competent authorities of the Member States is essential for the purposes of this Directive. Consequently, Member States should not prohibit or place unreasonable or unduly restrictive conditions on this exchange of information and provision of assistance.
- (83) Supervisors should be able to cooperate and exchange confidential information, regardless of their respective nature or status. To this end, they should have an adequate legal basis for exchange of confidential information and for cooperation. Exchange of information and cooperation with other authorities competent for supervising or overseeing obliged entities under other Union acts should not be hampered unintentionally by legal uncertainty which may stem from a lack of explicit provisions in this field. Clarification of the legal framework is even more important since prudential supervision has, in a number of cases, been entrusted to non-AML/CFT supervisors, such as the European Central Bank (ECB). *When imposing administrative sanctions and supervisory measures on obliged entities, or performing other tasks necessitating coordination between supervisors and non-AML/CFT authorities, the authorities concerned should take into account the differences between their respective supervisory mandates and cooperate accordingly.* (AM 335)
- (83a) *The exchange of information among supervisors and with other authorities is a key enabler in order to ensure the effectiveness of the Union AML/CFT framework. Member States should authorise the exchange of information between supervisors and other relevant authorities, including, where relevant, the European Public Prosecutor's Office and the European Anti-Fraud Office with regard to possible cases pertaining to their respective legal mandates. Confidential information exchanged should only be used in the discharge of the duties of the authorities concerned, and in the context of administrative or judicial proceedings specifically related to the exercise of those functions.* (AM 58)
- (84) The effectiveness of the Union AML/CFT framework relies on the cooperation between a wide array of competent authorities. To facilitate such cooperation, AMLA should be entrusted to develop guidelines in coordination with the ECB, the European Supervisory Authorities, Europol, Eurojust, and the European Public Prosecutor's Office on cooperation between all competent authorities *at national and EU level*. Such guidelines should also describe how authorities competent for the supervision or oversight of obliged entities under other Union acts should take into account money laundering and terrorist financing concerns in the performance of their duties. (AM 336)
- (85) Regulation (EU) 2016/679 applies to the processing of personal data for the purposes of this Directive. Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>18</sup> applies to the processing of personal data by the Union institutions and bodies for the purposes of this Directive. The fight against money laundering and terrorist financing is recognised as an important public interest ground by all Member States. However, competent authorities responsible for investigating or prosecuting money laundering, its predicate offences or terrorist financing, or those which have the function of tracing,

seizing or freezing and confiscating criminal assets should respect the rules pertaining to the protection of personal data processed in the framework of police and judicial co-operation in criminal matters, including Directive (EU) 2016/680 of the European Parliament and of the Council<sup>19</sup>.

- (86) It is essential that the alignment of this Directive with the revised FATF Recommendations is carried out in full compliance with Union law, in particular as regards Union data protection law, including rules on data transfers, as well as the protection of fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union (the ‘Charter’). Certain aspects of the implementation of this Directive involve the collection, analysis, storage and sharing of data within the Union and **possibly** with third countries. Such processing of personal data should be permitted, ~~while fully respecting fundamental rights~~, only for the purposes laid down in this Directive, and for the activities required under this Directive, such as the exchange of information among competent authorities, **while fully respecting fundamental rights obligations as required by Article 6 TEU and Union data protection rules as regards onward data transfers, including to third countries**. (AM 56, 337)
- (87) The rights of access to data by the data subject are applicable to the personal data processed for the purpose of this Directive. However, access by the data subject to any information related to a suspicious transaction report would seriously undermine the effectiveness of the fight against money laundering and terrorist financing. Exceptions to and restrictions of that right in accordance with Article 23 of Regulation (EU) 2016/679 and, where relevant, Article 25 of Regulation (EU) 2018/1725, may therefore be justified. The data subject has the right to request that a supervisory authority referred to in Article 51 of Regulation (EU) 2016/679 or, where applicable, the European Data Protection Supervisor, check the lawfulness of the processing and has the right to seek a judicial remedy referred to in Article 79 of that Regulation. The supervisory authority referred to in Article 51 of Regulation (EU) 2016/679 may also act on an ex-officio basis. Without prejudice to the restrictions to the right to access, the supervisory authority should be able to inform the data subject that all necessary verifications by the supervisory authority have taken place, and of the result as regards the lawfulness of the processing in question.
- (88) In order to ensure continued exchange of information between FIUs during the period of set-up of AMLA, the Commission should continue to host the FIU.net on a temporary basis. To ensure full involvement of FIUs in the operation of the system, the Commission should regularly exchange with the EU Financial Intelligence Units' Platform (the ‘EU FIUs’ Platform’), an informal group composed of representatives from FIUs and active since 2006, and used to facilitate cooperation among FIUs and exchange views on cooperation-related issues.
- (89) Regulatory technical standards should ensure consistent harmonisation across the Union. As the body with highly specialised expertise in the field of AML/CFT, it is appropriate to entrust AMLA with the elaboration, for submission to the Commission, of draft regulatory technical standards which do not involve policy choices.
- (90) In order to ensure consistent approaches among FIUs and among supervisors, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to supplement this Directive by adopting the regulatory technical standards setting out the criteria as regards appointment and functions of a central contact point of certain services providers, **setting out indicators to classify the level of gravity of breaches and criteria for such repeated failures to provide register with up-to-date, accurate and adequate information on**

**beneficial ownership**, setting out benchmarks and methodology for assessing and classifying the inherent and residual risk profile of obliged entities and the frequency of risk profile reviews, laying down details of duties of the home and host supervisors, and the modalities of cooperation between them, specifying the general conditions for the functioning of the AML supervisory colleges and the operational functioning of such colleges, **the specifying the general conditions for supervision of groups of obliged entities other than credit or financial institutions**, defining indicators to classify the level of gravity of breaches of this Directive and criteria to be taken into account when setting the level of administrative sanctions or taking administrative measures. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (91) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission in order to lay down a methodology for the collection of statistics, establish the format for the submission of beneficial ownership information, define the technical conditions for the interconnection of beneficial ownership registers and of bank account registers and data retrieval mechanisms ~~as well as~~ **, define the technical conditions for the connection of the Member States' mechanisms to the single access point on land and real estate, to specify the criteria and format to be used by FIUs for sharing information on suspended or prohibited transactions and on suspended accounts**, to adopt implementing technical standards specifying the format to be used for the exchange of the information among FIUs of the Member States **and the relevant factors to be taken into account when determining if a suspicious transaction report concerns another Member State as well as to adopt implementing technical standards specifying a common template for the cooperation agreements between financial supervisors and their counterparts in third countries**. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>20</sup>. (AM 60, 339, 340)
- (92) This Directive respects the fundamental rights and observes the principles recognised by the Charter, in particular the right to respect for private and family life (Article 7 of the Charter), the right to the protection of personal data (Article 8 of the Charter) and the freedom to conduct a business (Article 16 of the Charter). **It does not modify the obligation to respect the fundamental rights and legal principles enshrined in Article 6 TEU**. (AM 61)
- (93) When drawing up a report evaluating the implementation of this Directive, the Commission should give due consideration to the respect of the fundamental rights and principles recognised by the Charter.
- (94) Since the objectives of this Directive, namely the establishment of a coordinated and coherent mechanism to prevent money laundering and terrorist financing, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and the effects of the proposed action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.



- (95) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>21</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (96) The European Data Protection Supervisor has been consulted in accordance with Article 42 of Regulation (EU) 2018/1725 [and delivered an opinion on ...<sup>22</sup>].
- (97) Directive (EU) 2015/849 should therefore be repealed